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SOME
OBSERVATIONS
ON THE
LATE DETERMINATION
FOR
Discharging Mr. WILKES from his COMMITMENT
to the Tower of LONDON;
FOR BEING
The AUTHOR and PUBLISHER
OF A
SEDITIONOUS LIBEL,
CALLED THE
NORTH BRITON,
NUMBER XLV.

By a MEMBER of the HOUSE of COMMONS.

LONDON:

Printed in the YEAR M.DCC.LXIII.

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RESERVATIONS

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S O M E
O B S E R V A T I O N S
O N T H E
L A T E D E T E R M I N A T I O N
F O R
Discharging Mr. W I L K E S.

A PARTICULAR and exact Account of the Opinion of the Judges of the Court of Common Pleas, as delivered by the Lord Chief Justice *Pratt*, on *Friday* the 6th of *May* 1763, with respect to the Question, Whether Mr. *Wilkes* was or was not liable to be arrested for being the Author and Publisher of the *North Briton*, N^o XLV. faithfully transcribed from the Short-hand Notes of a Person who was in Court the whole Time, together with Observations on the principal Authorities on which that Opinion appears to be founded, will, in a Case so interesting, and big with Consequences so alarming to the Safety and Liberties of the Subject at large, merit the serious Attention and Perusal of the Public.

Soon after the Publication of the *North Briton*, N^o XLV. the Earl of *Halifax* issued the following Warrant (which is in the usual official Form used in the Time of former Secretaries of
A State)

State) to *search* for the Authors, Printers, and Publishers of the said Paper, and bring them, with their Papers, before him to be examined.

George Montagu Dunk Earl of *Halifax*, Viscount *Sunbury*,
(L. S.) and Baron *Halifax*, one of the Lords of his
Majesty's most Honourable Privy Council, Lieutenant General of his Majesty's Forces, and Principal Secretary of State, &c.

These are, in his Majesty's Name, to authorize and require you (taking a Constable to your Assistance) to make strict and diligent Search for the Authors, Printers, and Publishers of a seditious and treasonable Paper, intituled *The North Briton*, Number XLV. *Saturday April 23d*, 1763, printed for *G. Kearsly*, in *Ludgate-Street, London*; and them, or any of them, having found, to apprehend and seize, together with their Papers, and to bring in safe Custody before me, to be examined concerning the Premises, and further dealt with according to Law. In the due Execution whereof, all Mayors, Sheriffs, Justices of the Peace, Constables, and all other his Majesty's Officers civil and military, and loving Subjects, whom it may concern, are to be aiding and assisting to you as there shall be Occasion. And for so doing This shall be your Warrant. Given at *St. James's* the Twenty-sixth Day of *April* 1763, in the Third Year of his Majesty's Reign.

To *Nathan Carrington*, *John Money*,
James Watson, and *Robert Black-*
more, Four of his Majesty's Mes-
sengers in Ordinary.

Dunk Halifax.

Before

Before this Warrant was executed, the proper Officers of the Crown had given their Opinion that *The North Briton*, N^o. XLV. was "a most infamous and seditious Libel, tending to inflame
" the Minds and alienate the Affections of the People from his
" Majesty, and to incite them to traiterous Insurrections against
" his Government, and punishable as a Misdemeanour of the
" highest Nature, in due Course of Law, by Indictment or Information."

The Publisher and Printer having been taken into Custody by virtue of the above Warrant, upon their Examinations before the Earls of *Egremont* and *Halifax*, his Majesty's Principal Secretaries of State, declared that Mr. *John Wilkes*, of *George-street, Westminster*, was the Author of *The North Briton*, N^o. XLV.

This Evidence being laid before the proper Officers of the Crown, they were of Opinion that "the Publication of a Libel,
" being a Breach of the Peace, is not a Case of Privilege, and that
" Mr. *Wilkes* might be committed to Prison for the same."

On *Saturday* the 30th of *April*, 1763, Mr. *Wilkes* was taken into Custody of a Messenger, by virtue of the above Warrant, and was the same Morning brought before the Earls of *Egremont* and *Halifax*, his Majesty's Principal Secretaries of State, in order to his being examined by them in relation to the said Libel, and was afterwards committed to the Tower, he not offering or submitting to give Bail, it never having been doubted but that his Offence was a bailable Offence. The Warrant for his Commitment was in the Words following:

Charles,

Charles Earl of *Egremont* and *George Dunk* Earl of *Halifax*,
Lords of his Majesty's most Honourable Privy Council, and
Principal Secretaries of State, &c.

These are, in his Majesty's Name, to authorize and require you
to receive into your Custody the Body of *John Wilkes*, Esquire,
herewith sent you, for being the Author and Publisher of a
most infamous and seditious Libel, intituled *The North Briton*,
N^o XLV. tending to inflame the Minds and alienate the Affections
of the People from his Majesty, and to excite them to traiterous
Insurrections against the Government; and to keep him safe and
close until he shall be delivered by due Course of Law; and for
so doing this shall be your Warrant. Given at *St. James's* the
Thirtieth Day of *April*, 1763, in the Third Year of his Majesty's
Reign.

Egremont. (L. S.)

Dunk Halifax. (L. S.)

To the Right Honourable *John* Lord
Berkley of *Stratton*, Constable of
his Majesty's Tower of *London*, or
to the Lieutenant of the said Tower,
or his Deputy.

On *Tuesday* the 2d of *May*, 1763, Mr. *Wilkes* was brought
up by a *Habeas Corpus* into the Court of Common Pleas, when
several Exceptions were taken by his Counsel to the Form of the
Warrant of Commitment, which were all afterwards over-ruled.
Another Objection was taken, that Mr. *Wilkes*, being a Member
of Parliament, was privileged from being arrested for the Offence
where-

wherewith he was charged in the Warrant of Commitment, and therefore ought to be discharged out of Custody.

The Court took Time to consider of the Objections till *Friday* the 6th of *May*, 1763, when they were of Opinion that the Warrant for his Commitment to the Tower was good, both in Form and Substance, notwithstanding the Objections Mr. *Wilkes's* Counsel had taken to it.

But with respect to the Point of Privilege, the Court were unanimously of Opinion, that the being the Author and Publisher of an infamous and seditious Libel of the Tendency expressed in the Warrant of Commitment, was an Offence for which a Member of the House of Commons ought not to have been committed to Prison, or compelled to give Bail.

The Account Mr. *Wilkes* or his Friends published in the *Public Ledger* of *Saturday May* the 7th, of what passed in the Court of Common Pleas, on that Occasion will, from the Perusal of the following Sheets, appear to be a gross Reflection on the Court, and an Imposition on the Public.

The Substance of the Argument of the Lord Chief Justice Pratt in the Case of Mr. Wilkes, so far as relates to his Privilege as a Member of the House of Commons.

I now come to the Third Objection, which is Mr. *Wilkes's* Claim here as a Member of the House of Commons. We are all of Opinion *that he is intitled to his Privilege, and that he*

B

ought

ought to be discharged. In the First Place, we are bound to take Notice of it. He is admitted by the King's Serjeants to be a Member of the House of Commons; and, if it was not admitted, we are clearly of Opinion that Mr. *Wilkes* would have had a Right to produce legal Evidence to shew that Fact. As there is no legal Method for him to possess the Court of that Matter, this Method must be allowed, because otherwise he would be without Remedy.

In the Case of the Seven Bishops the Court took Notice of this Privilege, from the Description given of those Spiritual Lords in the Body of the Warrant, which was inserted in the Return.

If Mr. *Wilkes* had been so described in this Warrant, we must have taken the same Notice of it upon the Face of the Warrant. If that would have been so, shall it be said that Mr. *Wilkes* must lose his Privilege, because that Addition to his Name is omitted by those who committed him? The Law would never suffer that to be the Case; it would leave the Liberty and Privilege of a Member of Parliament in the Power of the Justice of the Peace, or inferior Magistrate who committed him; nor do I apprehend any Writ of Privilege could issue, because there is *no Suit* against him in this Court; neither do the King's Serjeants suggest there is any other Way to make it appear, and have the Benefit of it; therefore, as it is brought before us, it is proper for us to state and determine it, and we are bound to do it.

This

This is evident from the Case of the Seven Bishops, where all the Counsel on both Sides concurred in arguing the Point, and the Court determined it.

I shall by-and-by allude to a Case that happened lately in the House of Lords.

4 Inst. 25. Lord *Coke* lays down the Privilege of Parliament, and he lays it down as a Matter cognizable by the common Law; he says the Common Law allows it, and enumerates in several Instances where it has lain for the Body of a Member.

“ Privilege of Parliament in Informations for the King. “ Generally the Privilege of Parliament do hold, unless it be in “ Three Cases, viz. *Treason*, *Felony*, and the *Peace*.” He refers to the Parliament-Roll in *Henry* the 6th’s Time. I had Recourse to it, in Sir *Robert Cotton*’s Abridgment. *W. B.* was committed to the *Fleet* in Execution for Debt, and was delivered by the Privilege of the Commons. It is there said, they have no Right to it in *Treason*, *Felony*, or the *Peace*.

In the Trial of the Seven Bishops, these Words are expounded to be *Sureties of the Peace*. The Counsel for the Crown admitted that to be the true Rule of Privilege, and the Court determined that to be the Rule.

12 Mod. The King against *Culpepper*.

Lord Chief Justice *Holt* says, Whereas it is said in our Books that Privilege is not to be allowed in *Treason*, *Felony*, or the *Peace*,

Peace, that must be where Sureties are required, Supplicavits, &c. but in Informations or Actions they are intitled to it.

So in Lord *Tankerville's* Case in the House of Peers (which is not in our Books, and therefore regularly we ought not to take Notice of it; but, in Points of Privilege, I do not think it improper to look into the Rolls of Parliament, because there the Points are determined with proper Authority) it was determined, that an *Information for Bribery* was clearly within the Case of Privilege, though that is *contra pacem*. All Proceedings by Information are so; yet that is only a constructive, not an actual Breach of the Peace; nor doth it, in this Case, make any Difference.

This Privilege is mentioned in several Statutes; the Statute of King *William* relating to Privilege, and that of the 2d & 3d of *Anne* which gives a Remedy against all Persons, Commons and Lords, guilty of Offences in publick Affairs, that states it to be the Privilege of Parliament.

That being the Nature and Extent of the Privilege, consider what we have before us.

I shall consider the Objection in both Lights, supposing it to be either for a Breach, or Sureties, or Articles of the Peace.

It hath been contended, that a Libel is an actual Breach of the Peace.

Lord *Coke* says, a Libeller it seems may be bound for his good Behaviour; such Libels *tend to* and *greatly excite* a Breach of the Peace.

Hicks's

Hicks's Case, Hob. 215. It was a private Libel, and there held to be a Provocation to a Challenge and to the Breach of the Peace.

The Meaning of this is, that a Libel was a Provocation to a Breach of the Peace.

1. Leving. 139. The Description of a Libel is, that it tends to a Breach of the Peace; the utmost that can be said is, that a Breach of the Peace either might or might not follow from it.

It will be hard to contend that that which *leads only* to a Breach of the Peace, is a Breach of the Peace.

Though I might admit, for the sake of Argument, that a Libel is a Breach of the Peace in a *large, liberal, and extensive* Light, yet it does not require Sureties, or that a Man should be bound to the Peace.

I do not find an Instance where it was determined that a Libeller is liable to be bound to the Peace; neither Lord *Hale* nor *Dalton* mention it; though they have mentioned Forty Instances wherein Sureties are required, they do not take Notice of a Libel.

Dalton instances where Sureties for good Behaviour may be required; he says, Sureties for good Behaviour may be demanded in these Cases, enumerating a great Number, without mentioning the Case of Libels.

When one comes to consider the Nature of the Case, I cannot think any thing can be more absurd than to demand Security of the Peace of a Libeller. How is the Peace broke by an inflammatory

matory Paper, from an Apprehension that other Persons may be excited to break the Peace? It is to make him bind himself that other Persons may not break the Peace; after he is bound, there can be no Breach of the Recognizance without an actual Breach of the Peace.

In the Case of the Seven Bishops indeed, Three of the Judges determined that Sureties of the Peace may be demanded against a Libeller.

This Opinion was owing perhaps to the *dark* insensible State of Justice in those Days. If you look at the Trial, you will see the Progress of the Point; you will see that the King's Counsel first affirmed the Proposition without Argument or Authority, and the Court confirmed it. *Powell*, the only honest Man of the Four, gave no Opinion at all, but desired further Time to consider of it.

I would not say so much of Judges, but every body knows one of these Judges was a notorious Papist; be that as it will, I deny that Case to be Law.

Suppose in that Case, That Bail was required; I should apprehend that even the Privilege of Parliament would not be taken away till the Security of the Peace is demanded and refused; then a Member of Parliament might be committed.

Lord Chief Justice *Holt* says, That a Breach of the Peace is to be intended, where Surety of the Peace is required.

The Person of a Member ought to be sacred, even if he should commit a Misdemeanor, unless it is absolutely necessary to confine

fine him to prevent further Mischief : *We are therefore all of Opinion, that Mr. Wilkes is intitled to his Privilege of Parliament, and therefore he must be discharged.*

Copy of the RULE or ORDER of Court for discharging Mr. Wilkes.

Jones. *Easter Term, in the 3d Year of King Geo. III.*

On the Behalf of *John Wilkes*, Esquire, *Friday May 6th.*
Upon reading a Rule made on *Tuesday* last, and the said *John Wilkes* being brought into this Court, pursuant to the said Rule, by *Charles Rainsford*, Esquire, Deputy Lieutenant of the *Tower of London*; and on reading the Writ of *Habeas Corpus* directed to *John Lord Berkley of Stratton*, Constable of his Majesty's said *Tower of London*, or to the Lieutenant of the said *Tower* or his Deputy, and the Return thereof made by the said *Charles Rainsford*; and on hearing Counsel as well on Behalf of his Majesty as of the said *John Wilkes*; and it being admitted by the Counsel for the Crown that the said *John Wilkes* is a Member of the House of Commons; it is ordered, That the said *John Wilkes*, by reason of his Privilege of Parliament, be discharged out of the Custody of the said *Charles Rainsford*.

By the Court.

Ex. *Paramor.*

Serjeants *Hewitt, Whitaker, Nares,*
and *Davy*, for the Crown.
Serjeant *Glynn* for Mr. *Wilkes*.

The unanimous Determination of one of the King's superior Courts of Justice in *Westminster-hall*, in a Cause of a criminal Nature properly before them, and within their usual Cognizance
and

and Jurisdiction, ought certainly to be treated, while it remains in Force, with Respect and Deference; but notwithstanding this, by the very Nature of our Constitution, which considers the best Judges *as Men*, and consequently *fallible*, and liable to Error and Mistakes, every Subject is at Liberty to examine with Temper and Candour the Force and Weight of the Authorities on which they founded their Determination. If this be the Right of the Subject in common Cases, it cannot be doubted of or thought improper, in the Case of a Determination, which, to many well-intentioned Persons, appears alarming and liable to Objections, and to be attended with Consequences that may affect the Liberties and Properties, if not the future Safety and Well-being of the King and his People. If, in consequence of this Inquiry, the Opinion of the Judges of the Common Pleas shall appear to be grounded in Law and Reason, it may possibly hereafter deserve the Attention of one or both Houses of Parliament to explain or vary the Law and Usage of Parliament in this Particular.

If, on the other side, the Determination of the Judges of the Court of Common Pleas shall appear to be ill-founded, the Author's Arguments will not be without their Use to the Publick, as they will probably be considered by the Judges of any other of the King's supreme Courts of Justice; before whom this great Question may come to be agitated in a legal Course of Proceeding (a). The particular Case lately before the Court of Com-

(a) The Attorney General, on the 9th of *May*, filed an Information in the Court of King's Bench against Mr. *Wilkes*, for the Libel in question, and he was served the same Day with the usual Process to appear thereto, and answer the Premises the next Day: Upon this Mr. *Wilkes* might, if he had thought proper, have appeared, or called upon the Court of King's Bench for their Opinion with respect to his Claim of Privilege.

mon Pleas is *closed*, and incapable of being set right by the *same* or any *other* Court, should it appear to be ever so much mistaken, as no Appeal or Writ of Error can be brought from it.

The Precedents relied upon to prove that Privilege extends to the present Case were principally these :

I. That Lord Chief Justice *Coke*, in his 4th Instit. Title Privilege of Parliament, says,

* “ Privilege of Parliament in In-
 “ formations for the King. Generally the
 “ Privilege of Parliament do hold, unless
 “ it be in Three Cases; viz. Treason, Felony, and the Peace.”

* Rot. Parl. an. 17 Ed. 4.
 N^o 36. Vid. 21 E. 4. fol.
 38, 39. Ro. Parl. an. 8 H. 6.
 n. 57. Vide infra p.

This being only the Dictum or Opinion of the Lord Chief Justice *Coke*, drawn from the Authorities quoted by him in the Margin, an Enquiry into those Authorities becomes necessary; the Reference to the Year-Book of the 21 Ed. 4. fol. 38, 39. is nothing to the Purpose, there being nothing in either of those Pages relative to Privilege; it is a Report of a Proceeding in the Court of King's Bench upon a Writ of Error, brought on a Judgment in the Common Pleas in an Action of Debt, in which *John Atwell*, Mayor of *Exeter*, was Plaintiff, against *John Taylor*; in which there is not the least Mention of Privilege of Parliament. The Reference, Vide infra p. is, upon Perusal of the rest of this Chapter, not to be met with.

D

Mr.

Mr. *Prynne*, in his Preface to the 2d Edition of Sir *Robert Cotton's* Abridgment of the Rolls of Parliament, published in 1689, gives this, among other Cautions, to his Readers:

“ I shall crave Leave to give the Readers some few Cautions touching all sorts of Abridgments in the Grofs, and this in Individuo.

“ 1. Let all Professors of the Law and other Studies beware, lest through Slothfulness, Ease, or Negligence, they more study and make use of Abridgments in their Professions than of the original Law-Books, Statutes, Authors abridged to their Hands, lest they divert them to close and shallow Cisterns, whose Leisure might serve (as they should principally endeavour) to be well acquainted with the deep and open original Springs, Authors, and Records themselves epitomised in and by them, whose Abridgments will only enable them to know but a little, and that superficially at second hand, but not thoroughly instruct them to understand much.

“ 2. When they have any special Occasion to make publick Use for themselves, their Clients, or others, of any Statutes, Law-Books, Records, *in this* or any other Abridgment, let them be sure to resort *to the Originals themselves*, and not rely upon the Abridgments alone, to prevent Mistakes, Errors, yea the Loss of their Reputations, if their Abridgments should misguide them. For as the original Records and Authors abridged are far more authentick than the Abridgments, so they are commonly more full and satisfactory (containing sundry Reasons, Circumstances, and sometimes Matters both of Fact and Law, which the Abridgments *omit*, curtail, and perchance

“perchance mistake) and are best for Use. It is dangerous
 “taking any thing upon Trust from Abridgments, or others Re-
 “ports alone in Matters of *publick* or *private* Concernment,
 “This was the Oversight of that great Ornament of our Law Sir
 “*Edward Coke*, who by trusting to other Mens Abridgments
 “and Notes of Records (which himself had no Vacancy to ex-
 “amine) was often seduced by them, and hath thereby seduced
 “others, by the Mistakes and Misrecitals published in his
 “printed Books; of which I have here and elsewhere given the
 “Readers some particular Instances, to testify both his and their
 “Mistakes, without the least Intention to detract any thing from
 “his venerable due Worth and Memory.”

And, in another Part of his Preface, Mr. *Prynne* adds this further Caution:

“In the Reading of this Abridgment I shall advise the Reader
 “*first* to distinguish between the Parliament-Rolls abbreviated,
 “and the *Abridger's Observations on them* here and there, which
 “are no Part of the Record itself.”

Mr. *Prynne*, in his 4th Part of his Register of Parliamentary
 Writs, p. 622, to p. 869. hath a whole Chapter or Section
 N^o 10. with this Title: “Comprising an exact Discourse and
 “Delineation of the true, just, antient, legal Bounds of the
 “Privileges claimed enjoyed by old *English* Parliament Mem-
 “bers, Officers, Servants, by irrefragable Records, Precedents,
 “Judgments, Reasons: When these Privileges begin, end; to
 “what Persons, Suits, Actions, Matters, Causes, they extend;
 “to what not: Who were and are the proper Judges of them,
 “and

“ and their Violaters: — With a Rectification of Sir *Edward Coke's* mistaken Records, and other Errors concerning the vast Extent of Parliament Privileges.”

In this Section or Chapter Mr. *Prynne*, after producing several Instances of Sir *Edward Coke's* Mistakes in quoting Records he had never read, proceeds thus :

4 Inst. p. 24, “ Sir *Edward Coke* had a strange Unhappiness
25, 48. “ above any I have met with to *miscite, mistake,*
“ *misapply* both Records and Precedents.” And in Page 836, after enumerating several Instances of Mistakes of this kind, he concludes with the following Words :

“ Let all Students and Practisers of the Law, from this and
“ other forecited great Mistakes of this reverend Judge, hence-
“ forth beware how they rely or build upon these or other his
“ Records, or Inferences from them, without due Examination
“ of the Records themselves, and his Deductions from them,
“ lest they wrack their own Reputations, and their Clients
“ Causes, or seduce or mislead the House of Commons (if Mem-
“ bers of it) in any of their Debates or Votes concerning Par-
“ liaments, or their Privileges, Proceedings, wherein he is so
“ frequently and grandly mistaken ; which I am necessitate to
“ mention, for the Vindication of Truth against Error, the In-
“ formation and Reformation of all seduced by his Writings,
“ the Honour of Parliaments, the Benefit of the present Age and
“ Posterity, without the least Intention to derogate from the
“ just Honour, Merits, or Memory of this reverend deceased
“ Chief Justice.”

Had the Advice of Mr. *Prynne* been attended to, this Dictum or Opinion of Lord Ch. J. *Coke*, which will clearly appear to be a Mistake, and not warranted by any Resolution of Parliament, or any other legal Authority, would probably not have been relied upon as the great and leading Foundation of the Opinion of the Court on the present Question.

The Words of Sir *Robert Cotton's* Abridgment (the Book consulted on this Occasion) are these: Page 596.

“ One *William Larke*, Servant to *William Milrede*, 8 Hen. 6.
N^o. 57.
 “ a Burgefs for *London*, being committed to the *Fleet*
 “ upon an Execution of Debt, was delivered by the Privilege
 “ of the Commons House, and Authority given to the Chan-
 “ cellor to appoint Certain by Commission to apprehend him
 “ after the End of the Parliament.

“ Wherein is to be noted that there is no Cause to arrest any
 “ fuch Man, but for *Treason, Felony, or the Peace.*”

These last Words are the Abridger's own, and are not warranted by the Parliament-Roll, as will appear by the Perusal of the following Copy of the Roll referred to; which hath on this Occasion been carefully examined by Mr. *Rook* with the Original Roll of Parliament in the *Tower*.

Priount les Communes, que la ou un William Larke Rot. Par. 8
H. 6. N^o 57.
 Servaunt a Willm. Milrede venant al vostre Court de
 ycest Parlement pour la Citee de Londres en le Service le dit
 Willm. Milrede alors esteant, par Sotyle imagination et conjecture
 dun Margerie Janyns fuist arestez en le Court Labbe de Westm. de

E

Pipowders

Pipowders par les Officers illoeques, et dilloeques remoeve en vostre *Commune Bank* per brief de corpus come causa al Suit de dit Margerie et par vos Justices de vostre dit Bank commaundez a vostre prison de Flete et la en prisonne detenez a present par force d'un Juggement donez envers le dit Willm. Larke en vostre dit Bank par vos ditz Justices si bien au cause que le dit Willm. Larke fust condempne al Suit de dit Margerie en vostre dit Bank en un Action de trespas en ces Damages de 208 l. 6 s. 8 d. devant le jour de Summonez de ices vostre Parlement, come pour fyne avous a faire pour ceo que le trespas fust trovez ove force et armes.

Please a vostre Royall Mageste de considerer coment le dit Willm. Larke al temps de dit arrest fust en la Service de dit Willm. Miltrede, supposant vraiment par le Privilege de vostre Court de Parliament destre quitez de toutz arrestes durant vostre did Court fors prise par Treson, felonie, ou Suerte de Pees (a) dordeigner par auctorite de mesme vostre Parlement, que le dit Willm. Larke pourra estre deliverez hors de vostre dit Prison de Flete le dit Condemnation Juggement et Execution, ou ascun dependantz sur yeell envers et sur luy nient obstant, Salvant toutz foitz au dit Margerie et a ces Executours leur Execution hors le dit Juggement envers le dit Willm. Larke apres le fyne de dit Parlement et auxi de grauntier par auctorite suis dite que null de vos ditz Lieges, cest assav. Srs. Chivalers pour vos Countees, Citizeins et Burgeys au vos Parlements desore avenirz leur Servantz et familiers ne soyent astivement arestez ne en prison

(a) Instead of these last Words *Suerte de Pees*, the Abridger of the Parliament Rolls hath, in his Note on this Record, used the Word *Pees* generally.

detenez

detenez durant le temps de vos parlemetz sil ne soit pur *Treason, felonie, ou Suerte de Pees*, come de suis et dit.

Le Roy par advys des Seignrs. Espuelx et Temperelx et ales Ro. Especiales requestes des Communes esteants en cest present Parlement *et auxint dell assent du Conseill du Margeri Jannyns* nomez en cest Petition voet et graunte par auctoritie du dit Parlement, que Willm. Larke nomez en la dite Petition soit deliverez *au present* hors de *la prison de Fleete*; Et que le dit Margerie *apres le fyne de cest Parlement* eit sa execution del jugement, quele avoit envers le dit Willm. *en le Commune Bank* si come il est contenuz en mesme la Petition en mesme la forme, come ele deust avoir eu, si son Juggement unques ne fust execut Et que les Juges del dit Bank facent au dit Margerie *apres la fyn de cest Parlement*, Execution du dit Juggement par *capias ad satisfaciend* et par *exigent* et auxi facent processe pour nostre Seign. le Roy pour son fyne envers le dit William par *Capias et Exigent* si come eux feroient, si le dit Willm. unques nust este prisne ne emprisonne par cause du Juggement susdit.

Et outre le Roy voet par auctoritie de mesme le Parlement, que la Chancellor Dengleterre pour le temps esteant *de puy le fyn du dit Parlement* face Commissions as divers parsonnes par sa discretion assignees de prendre le dit Willm. et luy delivrer au Gardein de Fleete, que soit tenuz de luy recevoir et garder tanque gree soit faite al avant dite Margerie, de la Somme par luy recovere par le Juggement de susdit, & au Roy de ceo, que a luy appartient celle partie.

Et

Et que icell delivrance au dit Gardein soit de mesme leffect pour la dite Margerie, come serroit Execution par lui fait par Capias ad satisfaciend' ascune variaunce par la dite Petition ou Jendorsement dicell, et le Record du dit recoverer ou ascun autre chose nient contrestant, *et quant a la remenant de la Petition Le Roy S'adviseira.*

The Proposition advanced by Lord Ch. J. *Coke*, and for Proof of which he cites this Record of Parliament, was that Privilege of Parliament, held in Informations *for the King*, and that generally it held, unless in the Cases of Treason, Felony, and *the Peace*.

The Reader must have observed that *William Larke*, mentioned in this Record, was not arrested on an Information *for the King*, or on any other criminal Prosecution, but in a *civil* Action, at the Suit of *Margery Janyns* for a *Debt*; and that instead of *giving* any Countenance to the Conclusion drawn from it by Sir *Ed. Coke* in his 4. Inst. 25. it is, on the contrary, an express Authority against it: All that was done by the King in Parliament in this Case was the passing a private Act, *by Consent of the Plaintiff's Counsel*; but with respect to the general Claim of Privilege thereby prayed by the Commons, "that they and "their Servants should not, for the future, be any-ways arrested "or detained in Prison during the Time of Parliament, except for "Felony, Treason, or Surety of the Peace:" Instead of the King and the Lords granting this Claim of the Commons, it was denied and rejected, the Answer given it being that used on those Occasions—*Le Roy S'adviseira.*

The Privilege the Commons by this Petition desired might be granted them for the future was, a general Exemption from Arrests *during the Time of Parliament* in all Cases except for Treason, Felony, or Surety of the Peace.—This Claim was new; their Privilege from Arrests, as it then stood, being applicable only to personal or civil Suits, the granting it would have extended this Privilege to the King's Suits, in Cases where they were sued as Debtors and Accomptants to the Crown, and to many other Suits and Proceedings, as well criminal as others, to which Privilege of the Commons was then understood not to extend. This without doubt induced the Crown wisely, and for the Good of the Subject at large, to refuse to enlarge the Privilege of the Commons to the Extent they desired.

The adopting a Principle so inconsistent with the Safety of the Crown and the Liberty of the People, in the Latitude before-mentioned, was left to more modern Times.

The Writs of Privilege apply this Claim to personal and civil Suits only.

In a Writ of Privilege which issued in the 13th *Ed.* 4. to the Court of Exchequer for one *Robert Cofyn*, a menial Servant of *Thomas Seintleger*, a Member of the House of Commons, the Privilege of Members and their Servants from Arrests is stated to be a Privilege at Common Law, or by Prescription. — In this Writ of Privilege *Cofyn's* having procured a new Clause, extending it to the *not suing a Member or his Servant*, the Barons, *after consulting with the rest of the twelve Judges*, disallowed the Privilege as prayed, and gave Judgment for the Plaintiff in the

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Action—

Action—The Record of the whole Proceeding is printed in *Prynne, Brevia Parl.* Part iv. p. 757. So much of it as relates to the present Point is in the Words following :

Et super hoc idem Robertus per Attornatum suum Predictum detulit hic Breve Domini Regis sub Magno Sigillo suo Clausum Thesaurario & Baronibus hujus Scaccarii directum, cujus Brevis tenor Sequitur in hæc Verba.

Edwardus, Dei Gratia Rex Angliæ, Franciæ, & Dominus Hiberniæ, Thess. & Baronibus suis de Scaccario Salutem *Cum Secundum Consuetudinem in Regno Nostro Angliæ hætenus Optentam et Approbatam Domini Magnates, et Milites Comitatum, ac Cives et Burgenses Civitatum et Burgorum* ad Parliamenta nostra de Summonitione nostra Venientes; et in eisdem Morantes seu residentes, ac eorum servientes et familiares *ratione alicujus Transgressionis, Computi, Conventionis, seu alterius Contractus Cujuscunque*, dum sic in Parliamentis nostris Morentur Arrestari minime debeant, imprisonari, * *seu implacitari*. Et jam ex gravi querela dilecti & fidelis nostri Thomæ Scintleger, unius Militum Com. nostri Surr. accepimus quod licet ipse ad præsens Parliamentum nostrum de Summonitione nostra venerit, et in eadem moretur, quidam tamen Thomas Ryver, Civis & Pellitarius London, Considerationem ad hoc non habens, implacitet Coram Vobis in Scaccario Prædicto per Billam Sive, Breve, inter Robertum Cosyn, Custodem Magnæ Garderobæ nostræ, alias dictus Robertus Cosyn, Civem et Mercerem London, servientem prædicti Thomæ, qui cum eodem Thomæ ad præsens Parliamentum nostrum venit et Serviens Familiaris Ejusdem Thomæ

* This was a new Privilege.

existi,

existit, prout idem Thomas Coram Nobis in Cancellaria nostra personaliter Constitutus Sacramentum præstitit Corporale de Debito quadraginta et unius librarum decem Soldiorum et sex denariorum, quod idem Johannes a præfato Roberto exigit, ut dicitur, in ipsius Thomæ Scintleger dampnum non Modicum et gravamen & contra Consuetudinem supradictum. Vobis Mandamus quod *scita est* *, tunc placito illi coram vobis ulterius tenenda. Superfedeatis omnino, ipsum Robertum contra Consuetudinem prædictam non Molestantes in aliquo seu gravantes. Teste me ipso apud Westm. tertio die Novemb. Anno Regni nostri tertio decimo.

Et prædictus Robertus Cosyn jam defendens dicit, quod ipse et prædictus Robertus Cosyn indicto Brevi nominatus sunt una & eadem persona, & non alia neque diversa, et quod ipse est, et dicto tertio die Novembris, et semper postea fuit Serviens familiaris prædicti Thomæ Scintleger, et cum eo ad Parliamentum prædictum venit, quæ omnia & singula idem Robertus Cosyn paratus est verificare prout curia, &c. Unde non intendit quod ipse ad respondend. præfato Johi' Ryver ad Actionem suam prædict. Compelli debeat, et petit Judicium et Breve prædictum sibi allocare &c. Et super hoc prædictus Johannes Ryver, per Richardum Blyffet Attornatum suum petit, quod ipse Robertus Cosyn respondeat ei in præmissis Brevi illo non Obstante, et quod Breve illud pro eo quod non habetur, nec unquam habebatur *talis Consuetudo*, quod Magnates et Milites Com. ac Cives & Burghenses Civitatum et Burgorum ad Parliamentum de Summonitione

* This Clause made it frequently necessary for the Judges, to whom these Writs of Privilege were directed, to determine concerning the Extent, &c. of the Privilege of Members of the House of Commons.

Regiæ venientium, ac eorum familiares ratione alicujus, Transgressionis Debiti, Computi, Conventionis, aut alterius, contractus cujuscunque dum sic in Parlamento regio morentur *minime debeant implacitari*, prout in Brevi illo specificatur & recitatur, disalloceatur, & super hoc viso & prælecto Brevi prædicto per Barones, &c. *habitoque Avisamento Justiciariis Domini Regis de utroque Banco in hac parte*; quia videtur præfatis Baronibus de Avisamento Justiciariorum prædictorum, quod talis habetur et habebatur Consuetudo, quod Magnates et Milites Com. ac Cives et Burghenses Civitatum et Burgorum ad Parlamentum de Summatione regia venientes, ac eorum familiares, ratione alicujus Transgressionis, Debiti, Computi, Conventionis, Contractus, cujuscunque dum sic in Parlamento Regis, morentur *capi aut arrestari non debent*, sed nullam hujusmodi Consuetudinem fore quin *implacitari*, debent, prout in Brevi illo Supponitur; Ideo Consideratum est per Barones prædictos, quod breve illud disalloceatur, et quod prædictus, Robertus Cosyn respondeat præfato Johanni Ryver ad Billam suam prædictam Brevi prædicto non obstante. Et super hoc ad eundem diem Mercurii 15^o Diem Novembris dictus Robertus Cosyn per prædictum Attornatum suum, &c. nihil dicit in barram aut exclusionem dictæ Actionis ejusdem Johis' Ryver. Et super hoc idem Johes' Ryver ex quo prædictus Rob. Cosyn nihil dicit in barram aut Exclusionem dictæ Actionis ejusdem Johis', petit judicium suum in præmissis, et debitum suum prædictum, una cum dampnis suis prædictis sibi in hac parte adjudicari, &c. Et quia Curia prædicta ad presens non avisatur ad judicium reddendum in præmissis, ideo datus est dies præfatis Johi' & Roberto de præmissis in eodum statu quo nunc usque in Octabis Sancti Hillarii ad audiendum judicium suum inde.

Ad

Ad quem diem prædictus Johes' venit hic per prædict. Attornatum suum, & petit Judicium in præmissis, ut prius, &c. Super quo visis præmissis per Barones prædictos habitaque inde deliberatione plenaria inter eosdem Consideratum est per eosdem Barones, quod prædictus Johes' Ryver recuperet versus præfatum Robertum Cosyn Debitum suum prædictum, quadraginta Librarum decem solid. et sex denar. et dampna sua prædicta, tam Occasione injustæ detentionis Debiti illius, quam pro misis et Custagiis suis Circa sectam suam prædictam in hac parte appunct. taxata per eosdem Barones ad viginti & sex solidos & octo denarios, quæ quidem summe in toto se attingunt ad Summam quadraginta & duarum librarum decem & septem solidorum & duorum denar. et quod prædict. Robertus Cosyn sit in misericordia Domini Regis, &c.

The next and only remaining Authority quoted by the Lord Chief Justice *Coke* in support of his Proposition is, the Parliament-Roll of 17 *Ed.* 4. N^o 36.

This Record was *not cited or relied upon* by the Court in the Case of Mr. *Wilkes*.

In *Cotton's* Abridgment, Page 704, this Case is referred to as N^o 36 on the Parliament-Roll, instead of N^o 35, N^o 36 having no relation to Privilege of Parliament; but in this Sir *Edward Coke* faithfully adheres to the Abridger's Mistake, quoting it as being entered N^o 36 on the Roll of Parliament, whereas the true Number is N. 35.

Bishop *Burnet*, in his Life of Lord Ch. J. *Hales*, in a List of Manuscripts of his not published, mentions the following :

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“ Preparatory

" Preparatory Notes touching Parliamentary Proceedings,
 " 2 Vol. Quarto."

This Manuscript is not amongst his other Law MSS. in the Library of the Society of *Lincoln's Inn*, and it does not appear whether they were the Judge's own, or the Collection of any other Person.

In 1707, there was published a Work, intituled, *The original Power and Jurisdiction of Parliament*, said to be a Manuscript of the late Judge *Hale's*. In this Book, Page 20. Title Privilege of Parliament, there are the Two following Paragraphs:

" Rot. Parl. 17 *Ed.* 4. N^o 33. & 21 *Ed.* 4. fol. 38, 39. Pri-
 " vilege of Parliament *allow'd* in Case of Information for the
 " King.

" Rot. Parl. 8 *H.* 6. N^o 57. Generally the Privilege of Parlia-
 " ment doth hold, unless it be in these Cases; viz. Treason,
 " Felony, and Breach of the Peace."

These Paragraphs, and that in 4 *Inst.* 25. were probably transcribed from the same mistaken Source.

Sir *Matthew Hales's* Manuscript in the Reference to the Parl. Roll of the 17 *Ed.* 4. is as unfortunate as Lord Ch. J. *Coke* — The Parliament Roll of the 17 *Ed.* 4. N^o 33. relates to Sheriffs Returns, and not to Privilege.

The Roll intended to be referred to by both these Authors was certainly that of 17 *Ed.* 4. n. 35. which will nevertheless appear, on Perusal, not to give the least Countenance to the Proposition

position it is quoted to prove—that Privilege of Parliament was *allowed* in Case of *Information for the King*.

17 *Ed. 4.* N^o 36.

Cotton's Abridgment, p. 704.

It is enacted, That *John Attwell*, a Burgess of *Exeter*, being condemned during the Parliament, in the Exchequer, upon Eight several Informations, by the Pursuit of *John Taylor*, of the same Town, shall have as many Superfedeas therefore as he will, until his coming home.

Rot. Parl. 17 *Ed. 4.* N^o 35.

To the King oure Sovereigne Lord, Prayen the Commons in this present Parlement assembled, That whereof Tyme that mannys mynde is not to the contrary, itt hath been used that the Knights of the Shyrs, Cittezeins of Cittys, Burgeffes of Burghs, and Barons of 5 Ports of thys your Relme, called to any of the Parliaments of your noble Progemtours, and yours amongst other Libertees and Franchifces have, hold, and used Privillidge *that any of theme should not be impleaded in any Actione personell, nor be attached by their Persone or Goods in their coming to any such Parliaments there abydeing, nor from thence to their proper Home resorting*; which Libertees and Franchifces your Highncfs to your Leiges called by your Auctoritee Royall *to this your high Court of Parliament* for the Shyrs, Citees, Burghs, and v. Ports of thys Realme, by your Auctoritee Roiall att Comencement of this Parliament, graciously have ratified and confirmed to us your said Comones *now* assembled by your said Royall Comandment in this your said present Parliament; and

and itt is so, Soveraine Lord, that where oon *John Attwell*, one of the Cityzens of the City of *Exeter*, coming to this present Parlement, and here continually attending upon the same *sithen the Comencement thereof*, con *John Taylor*, calling him Merchant of the said City of *Exeter*, by virtue of viij divers fained Informations made in your Eschequer, hath condemned the said *John Attwell* during this present Parlement, by the Defaute of Answer of the said *John* in 1601. the same *John* dayly attending upon the same Parlement, and not having Knowleche of the said Condempnations; upon which Condempnations divers and severall Writts been directed to divers Sheriffs of thys your Reame, some of *fieri facias*, and some of *capias ad satisfaciendam*; so that the said *John Attwell* may not have his free departing from this present Parlement to his Home, for doubte that both his Body, his Horses, and his other Goods and Cattails necessarie to be had with him, shuld be put in Executione in that Behalf, contrary to the Privilidge due and accustomed to all the Members usually called to the foresaid Parlements; Be it therefore ordered, by the Advice and Assent of the Lords Spirituell and Temporell in this present Parlement assembled, and by the Auctoritee of the same, that the said Writs of Execution, and every of them, to be had upon the same, in noe wyse to be Executour, nor hurtfull to the said *John Attwell*, his Heirs nor Executours, nor any of theme; and that the Chiefe Barrone of the same Exchequer for the Time being have Power by this Ordenance to grant without Denier to the said *John Attwell*, his Heirs and Executors, and every of theme, such and als many Writs of Superseas upon this Ordenance, to every such Sheriffe or Sheriffs of this Reame, to be directed to surcease of
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any Manner of Executione in that Behalfe to be made or had as by the said *John Attwell*, his Heirs and Executors, and every of theme, shall be requisite : Saving allwey to the foresaid *John Taylor* his foresaid Judgments and Executions, and every of theme, to be had and sued at his Pleasure against the said *John Attwell*, at any Tyme after the End of thys present Parlement, this Ordenance notwithstanding.

Re.

Le Roy le voet.

The Privilege claimed by the Commons in this Record of *not being impleaded in Actions personal, and of not being attached by their Persons or Goods in their coming to Parliament, there abiding, nor from thence to their proper Home returning*, is different from that they claimed the 8 *Hen. 6.* and from what the Barons of the Exchequer, *assisted by the rest of the Twelve Judges*, had the Year before determined to be the Rule of Privilege ; which Determination remained then in full Force, and had not been questioned or complained of in Parliament. Besides this Privilege, thus claimed by the Commons, is not granted or enacted by this Record ; if it had been so, instead of proving the Proposition for which it is referred to, it would rather prove that the Commons were not intitled to it : If they had, Mr. *Attwell* might have had the Benefit of it by Writ of Privilege in the usual Manner, and would have had no Occasion for the Interposition of the Legislature by a private Act of Parliament, made purely in this particular Case.

The State of the Proceedings mentioned in this Record to have been instituted in the Court of Exchequer by *John Taylor* against *John Attwell*, and the Proviso at the End of the Act for saving

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to

to *John Taylor*, the Plaintiff, *his* foresaid Judgments and Executions against the said *John Attwell* after the End of that Parliament, prove, to a Demonstration, that the Eight Judgments obtained against *Attwell*, during *the Sitting* of the Parliament, were not in Informations for the King for any publick Offence or Misdemeanor, but must have been Judgments in Informations carried on by *John Taylor* as a private Prosecutor, and therefore could not relate to the Case they are relied upon to prove.

But to put this Point out of Doubt, the Treasury of the King's Remembrancer's Office, in the Exchequer, hath been carefully searched for the Records of the Judgments in Question; and it thereby appears, that Eight Suits were commenced in *Trinity Term*, 16 *Ed. 4.* by *John Taylor* as a common Informer, who sued *qui tam pro Domino Rege quam pro seipso*, for Recovery against *John Attwell* of Eight distinct Penalties of 40 *l.* each; 20 *l.* for the King, and 20 *l.* for himself as Informer, on the Statute of 20 *H. 6. cap. 5. That no Customer, Collector, &c. or their Clerks, shall have a Ship of his own, use Merchandize, keep a Wharf, or Inn, or be a Factor.* To these Suits *Attwell* appeared and pleaded to Issue, and afterwards deserted his Plea and pleaded a Pardon from the King *puis darrein Continuance*. To this the Plaintiff objected, and insisted the Pardon only went to the King's Moiety, and could not discharge the Informer's Moiety of the Penalties. The Court took time to consider of this Point, and afterwards in *Hilary Term*, 17 *Ed. 4. which was while the Parliament was sitting*, solemnly gave Judgment, that the Pardon did not discharge the Informer's Moiety of the said Eight Penalties of 40 *l.* each, and therefore that the Plaintiff ought to recover his Share of the Penalties, being 160 *l.*

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This fully proves the Crown had not the remotest Interest in the Proceedings in Question *at the time the Judgments were pronounced*, and that in their original Institution it was the Case of mere popular Actions for the Recovery of Penalties, and not of Informations for the King for Offences in which the King or the Publick were Actors or essentially interested.

In the Appendix N^o I. (to avoid breaking the Thread of the present Observations more than was absolutely necessary) the Reader will find an exact Transcript of the Proceedings in one of these Eight Causes (which are all similar) from the original Roll remaining in the Exchequer (a).

In *Michaelmas* Term, in the 17th *Ed. 4.* *John Ector*, an Officer of the Aulage Duty at *Exeter*, filed an Information *pro Domino Rege* in the Court of Exchequer at *Westminster*, setting forth, That he having on the 8th Day of *August* preceding, seized at *Exeter* 14 Pieces of Cloth, as forfeited to the Use of the King, for being exposed to Sale without being sealed with the Aulage Seal, that the said *John Atwyll* thereupon came *vi et armis* and assaulted the said *John Ector*, and took and carried away *manu forti* four of the said 14 Pieces of Cloth, which the Information charges to be done *contra pacem Dom' Regis et in Contemptum ejusdem Dom' Regis*. Upon this the Barons ordered the said *John Atwyll* to be attached by his Body to answer to the King for his said Contempt, and for the Value of the

(a) *Communia Trin. 16 Ed. 4. placita coram Baronibus.—Rot. 18.—Rot. 18. dorso.—Rot. 29.—Rot. 29.—Rot. 29, dorso.—Rot. 30.—Rot. 30. dorso.—Rot. 31. dorso.* The private Act of Parliament 17 *Ed. 4. n. 35.* was sent by *Mittimus* to the Barons, and is inrolled, *Hil. 17 Ed. 4. Rot. c. 9.*

said.

said four Pieces of Cloth, by Process directed to the Sheriff of Devon, retournable in *quindena Sancti Hilarii* (the 27th of January.) Upon which *John Atwyll* appeared in Person in the Court of Exchequer upon the Return of the Process (*the Parliament then being sitting*) and instead of claiming or being allowed Privilege as a Member of the House of Commons upon this Information *for the King* for a Contempt, the Entry upon the Record is, *Et pro premissis committitur Prisonæ de Flete ibi moratur quousque, &c.* after which he was discharged, upon making a Fine to the King.—The Record of this whole Proceeding is set forth in the Appendix, N^o 2. and clearly proves that the Privilege of Members of the House of Commons in the 17th *Ed.* 4. did *not* extend to Informations *for the King* against a Member for a Contempt.—If this Proposition wanted any further Evidence, the Entries on the Rolls of this, as well as the precedent and subsequent Reigns, will, I make no doubt, furnish repeated Instances.

The Author thinks it unnecessary to add any thing more to refute the Opinion of the Lord Chief Justice *Coke*, 4 Inst. 25. which the Reader will observe is unsupported by every Authority cited by him to maintain it.

This is one, among others, of that great Man's Mistakes, which, as Mr. *Prynne* observes, by trusting to other Men's Abridgments, instead of having recourse to the Records themselves, he was often seduced by, and thereby frequently seduced others.

An unfortunate Mistake indeed, hurtful to the Peace and good Order of this Country at this Time, as it is the Foundation from which every other material Authority relied on for discharging Mr. *Wilkes* will appear to have taken its Rise.

II. The

II. The next Authority relied on by the Court of Common Pleas was, the Case of the Seven Bishops, committed to the Tower in 1688 by the Privy Council, *for contriving, making, and publishing a seditious Libel in Writing, against King James and his Government.*

The Court of Common Pleas, in Mr. *Wilkes's* Case, declared, that in this Trial the Words *or the Peace* were expounded to mean *Sureties of the Peace*, and that the *Counsel for the Crown* admitted that *to be the true Rule of Privilege*, and that the Court determined *that to be the Rule.*

The Question before the Court in the Case of the Seven Bishops related to the Privilege of Peers in Parliament, which differs in many Particulars from Privilege of Members of the House of Commons: However, as a Deduction of what passed on that Trial may throw Light on the great Question now under Consideration, I have, in the Appendix, transcribed from it every Expression relative to this Point.

The Perusal of these Extracts will put it in every Reader's Power to determine what Weight the Resolution of the Judges, with respect to the Privilege of the Seven Bishops, ought to have on the present Occasion.

Sir *Robert Sawyer* (p. 309) one of the Counsel for the Bishops, in his Argument declared, that what the Bishops Counsel principally relied upon was, That they ought not to have been committed *for this Libel, which is but a Misdemeanor at most*; that if the Commitment was used as Process to bring them in to answer an Information, he insisted no such Process could be taken

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out against the Persons of Peers for bare Misdemeanor. He agreed that for Felony, Treason, or Surety of the Peace, the Persons of Peers might be committed; and he added, that which is called *Surety of the Peace* in some of the [Law] Books, was in some of the Rolls of Parliament called *Breach of the Peace*, which he insisted was all one; and that the Meaning in short was, that it must be such a Breach of the Peace, for which a Man might by Law be obliged to find Sureties of the Peace. And p. 310, after the Chief Justice had reminded him, that the Ground he had taken was, that there was never any Commitment of a Peer for a bare Misdemeanor — Sir Robert Sawyer concluded with insisting, from the Authority, among others, of 4 Inst. 25. that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament Privilege.

The Counsel for the Crown, in Answer to this, did not admit that the Words *Breach of the Peace* were to be understood of such Breaches of the Peace only for which Sureties of the Peace might be demanded. On the contrary, they quoted the Cases of the Lord Lovelace and the Earl of Pembroke, to shew that a *Capias* lay on an Information for a Misdemeanor against a Peer — they insisted that there could not be a greater Breach of the Peace than the publishing a seditious Libel against the King and the Government, for which they said any Man might be committed — that this was a Breach of the Peace they relied on Sir Baptist Hicks's Case in Hobbart, which was a private Libel, and yet, as they insisted, held to be a Breach of the Peace.

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In giving their Opinion, not one of the Judges, that I can find, concurred in the Construction put on the Words Breach of the Peace by the Bishops Counsel.

Mr. Justice *Allybone*, in giving his Opinion, said, The Bishops are charged with publishing a *sedition* Libel. Mr. Solicitor General insists that is a Breach of the Peace. Wherever there is a *sedition* Act, I cannot tell how to make any other Construction of it, but that it is an *actual Breach* of the Peace; that is my Opinion. Mr. Justice *Holoway* and the Chief Justice gave their Opinions much to the same Effect, without saying any thing as to the Rule of Construction above-mentioned.

The Seven Bishops were committed to the Tower *for contriving, making, and publishing a seditious Libel in Writing, against his Majesty and his Government*: Mr. *Wilkes* was committed to the Tower *for being the Author and Publisher of a most infamous and seditious Libel, intituled The North Briton, N^o. XLV. tending to inflame the Minds, and alienate the Affections of the People from his Majesty, and to excite them to traiterous Insurrections against the Government*. The Papers described in both these Warrants as *sedition* Libels were in fact very different; that for which the Seven Bishops were committed, was a Petition delivered by them in a *legal, constitutional, and decent* Manner to the King; it was not printed or dispersed among the People, or otherwise published than by putting it into the King's own Hands. — In debating the Point of Privilege in both Cases, the Court could not enter into the Particulars of the Libels, but were bound to consider the Offences as they were described in the Warrants of Commitment *pro hac vice* to be true.

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In that Light they appear to be so similar, that it must, I imagine, be admitted, that, if the Judges did *right* in disallowing the Privilege claimed by the Seven Bishops, the Judges of the Common Pleas, by a Parity of Reason, did wrong in allowing Privilege to Mr. *Wilkes* in a Case upon the Warrant of Commitment so very similar.

The Court of Common Pleas were of Opinion this Determination in the Seven Bishops Case was *not legal*; whether it was or not must be submitted to future Consideration; if it was *legal*, it is an express Authority in point, that Privilege of Parliament doth not extend to the Case of a seditious Libel against the King and his Government.

To say that because some of the Judges were bad Men, and determined improperly with respect to the *Subjects Right of petitioning*, that therefore their Opinion on this Part of the Case was wrong and ill founded, may strike the Passions, but will not convince the Reason of Mankind. Besides, this Matter, after the Revolution in 1689, received a very close and spirited Revision in Parliament; the Warrant for the Bishops Commitment was laid before the House of Commons, and after being fully considered, the Result was, that the Commitment, or that Part of the Judges Determination which refused the Bishops the Privilege they claimed, were neither blamed or censured. On the contrary, what passed on that Occasion may be esteemed to be a tacit Avowal of their being *right* and *legal* (a).

(a) What passed in both Houses of Parliament on this Occasion will appear by the Entries in their Journals, which the Reader will find in the Appendix N^o III.

III. The next Authority relied on by the Court of Common Pleas was an *obiter* Opinion of the Lord Chief Justice *Holt*, in the Case of the King and *Culpepper*, reported in 12 Modern Reports, in these Words:

Term. St. Mich. 8 W. 3. 1696.

12 Mod. p. 108.

King and Sir *Thomas Culpepper*.

“ At a Trial at Bar, wherein Mention is made
 “ of Privilege of Parliament, *Holt* said, That
 “ whereas it is said *in our Books*, that Privilege of
 “ Parliament was not allowable in Treason, Fe-
 “ lony, or *Breach of the Peace*; that it must be intended *where*
 “ *Security of Peace* is desired; that it shall not protect a Man
 “ against a Supplicavit; *but it holds as well in Case of Indict-*
 “ *ments, or Informations for Breach of Peace, or in Case of*
 “ *Actions.*”

Privilege of Par-
 liament does not
 protect a Man
 where Security of
 the Peace is de-
 sired. Q.

It may be doubted whether Lord Ch. J. *Holt* delivered any Opinion in this Case relative to the Privilege of Parliament, the Publisher hath put a Q. in the Margin of the Print of this Case; this Circumstance in citing this Case was not attended to.—Two other Books, in which it is reported, make no Mention of any such Opinion; and it appears by the Entry of the Proceedings copied from the Roll, and printed at large in the Appendix, N^o 4. that Privilege of Parliament probably was not a Point under the Consideration of the Court at that Trial. But if Lord Ch. J. *Holt* did declare his Opinion as stated in 12 Mod. it must be considered as a very slight, if any, Authority in the present Case, it being a mere *obiter* Opinion, and probably no more than a

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Repetition

Repetition of the before-mentioned Mistake of Lord Ch. J. *Coke* in 4 Inst. 25.

The Reports of this Case, as printed in *Holt's* and *Skinner's* Reports, are in these Words :

The King *versus* Sir *Thomas Culpepper*, Mich. 8 Wm. 3.

Holt's Rep. P. 293. " The Defendant having committed a Riot upon
" the Person of Sir *F. W.* in his own House, an In-
" formation was brought against him ; and he produced a Wit-
" ness to swear the Contents of a Letter from the Prosecutor,
" who deposed it was the same Hand with another Letter which
" had been admitted to be read as Evidence.

" By *Holt* C. J. in the Case of a Deed lost or burnt we will ad-
" mit a Copy or Counterpart, or the Contents, to be given in Evi-
" dence ; but we never permit it, except it be proved that there
" was such a Deed executed ; now here the Witness cannot prove
" this Letter written, for he never had seen the Prosecutor write,
" and therefore it was disallowed."

The King and Sir *Thomas Culpepper*, Mich. 8 W. 3.

Skin. Rep. Page 673. " In an Information against Sir *Thomas Culpepper*, &c.
" for a Riot upon the Person of Sir *Francis Wythens* in
" his own House ; and for the Defendants a Letter of Sir *Francis*,
" who was the Prosecutor, was admitted to be read ; and then
" they produced a Witness to swear the Contents of another
" Letter, which was denied, he never having seen Sir *Francis*,
" write, but deposed that it was the same Hand with the Letter
" produced, *non alocatur* ; for, *per Holt* Chief Justice, though in
" the

“ the Case of a Deed lost or burnt they would admit a Copy or
 “ Counterpart, or the Contents, to be given in Evidence ; yet
 “ they never permitted it, except it be proved that there was such
 “ a Deed executed ; but here the Witness cannot prove the Letter
 “ written, for he never had seen Sir *Francis* write ; wherefore it
 “ was disallowed.

“ In this Case, *per Holt* Ch. J. a Defendant in Battery or Tref-
 “ pass, Riot, &c. shall be admitted to give Evidence, except Pro-
 “ cess be sued against him, or he appear and plead, though not
 “ Party to the Issue ; in which Cases he shall not be sworn, if it
 “ appear upon the Trial that such Evidence would have been
 “ given against him, that it would have been a Question to the
 “ Jury if he be guilty or not, if the Jury had been charged with
 “ him.”

IV. The next Authority relied upon by the Court in deter-
 mining the present Question was, the Case of the Earl of *Tanker-*
ville in the House of Peers in 1758.

This, like the Case of the Seven Bishops, was a Question con-
 cerning the Privilege of Peers, and not of any Member of the
 House of Commons. The House of Commons will not con-
 sider themselves to be bound by the Determinations of the House
 of Peers in relation to a Matter of Privilege.

Lord Chief Justice *Coke*, in his 4th Institute, Title Precedency,
 pag. 363. says, “ If any Question be moved in Parliament for Pri-
 “ vilege or Precedency of any Lord of Parliament, it is to be
 “ decided by the Lords of Parliament, in the House of Lords, as
 “ all Privileges and other Matter concerning the Lords House of
 “ Parliament

“ Parliament are, as Privileges and other Matters concerning
 “ the House of Commons are by the House of Commons to be
 “ decided.”

The Case of the Earl of *Tankerville* in 1758, as stated in the Journals of the House of Peers, was an Information for Bribery, at the Relation of a private Person ; and the Breach of Privilege complained of was for an Arrest of the Person of a Peer, and for compelling him to give a Bail-bond *during the actual Sitting of the Parliament*, and this done without previously obtaining Leave of the House for the doing it.—Mr. *Wilkes's* Case differs materially from this of the Earl of *Tankerville*. Mr. *Wilkes* was taken into Custody Eleven Days after the Parliament was prorogued, for a high Misdemeanor against the King and his Government, committed by Mr. *Wilkes* after the Prorogation.

Die Martis, 6 Junii, 1758.

Copy of the
 Lords Journ.
 6 June, 1758.

Complaint was made to the House, That *Beles Melengs*, a Sheriff's Officer in the County of *Bucks*, did, on *Friday* the 26th Day of *May* last, *during the Sitting of Parliament*, arrest the Earl of *Tankerville*, at his House at *Dorney*, in the said County, and obliged his Lordship to give Bail upon an Attachment issuing out of the Court of *King's Bench*, in Breach of his Lordship's Privilege, and the Privilege of this House ; and that the said *Beles Melengs* made the said Arrest, by the Direction of *Thomas Sheppard*, Under-Sheriff of the said County, as appeared by a Letter to him from the said *Thomas Sheppard*, which he delivered to the said Earl :

And

And thereupon *Thomas Eyre*, Esq; was called in, and examined upon Oath in relation to the Matter of the said Complaint, and verifying the same.

Ordered, That the Serjeant at Arms attending this House, his Deputy or Deputies, do forthwith attach the Bodies of the said *Beles Melengs* and *Thomas Sheppard* for their said Offence, and keep them in safe Custody till the further Order of this House. And this shall be a sufficient Warrant in that Behalf.

To *Richard Jephson*, Esq; Serjeant at Arms attending this House, his Deputy or Deputies, and every of them.

Ordered, That the Bail-Bond executed by the said Earl, and *Thomas Eyre*, Esq; his Surety, be forthwith delivered up to his Lordship, in order to be cancelled.

Die Martis, 13 Junii, 1758.

A Petition of *Thomas Sheppard*, Under-Sheriff for the County of *Bucks*, and of *Beles Melengs*, one of the Officers of the Sheriff of the same County, in Custody of the Serjeant at Arms attending this House for a Breach of Privilege in causing the Earl of *Tankerville* to be arrested, was presented and read, setting forth the Methods used to procure the Execution of the Writ against the said Earl, and alledging Threats against the said Sheriff if the said Writ was not executed, it being insisted on as the indispensable Duty of the Sheriff to execute the same, by which the Petitioner *Sheppard* was unfortunately drawn in to direct the Execution thereof; and praying that their Lordships, out of their great Goodness and Compassion, will be pleased to take the

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Case

Case of the Petitioners into Consideration, and from the Circumstances attending the same, be induced to pardon the Offence which they were inadvertently drawn to commit :

And it being moved, That the Petitioners might be brought to the Bar To-morrow, in order to their being discharged :

Ordered, That the said *Thomas Sheppard* and *Beles Melengs* be brought to the Bar of this House To-morrow, in order to their being reprimanded, and discharged out of Custody, paying their Fees.

Die Mercurii, 14 Junii, 1758.

Thomas Sheppard and *Beles Melengs*, in Custody of the Serjeant at Arms attending this House, for a Breach of Privilege in causing the Earl of *Tankerville* to be arrested, were (according to Order) brought to the Bar, where they (upon their Knees) receiving a Reprimand from the Lord Keeper, were ordered to be discharged out of Custody, paying their Fees.

And they were taken from the Bar.

And the House being informed, That they could give Evidence in relation to other Persons being concerned in the said Breach of Privilege :

The said *Thomas Sheppard* the Under-Sheriff, *Middleton Howard* his Agent in *London*, and the said *Beles Melengs*, were severally examined upon Oath in relation thereto :

And

And it appearing upon the said Examination, That *Jeremy Fish Palmer*, Clerk to Mr. *Brookland*, Attorney at *Windsor*, *L. Hercy*, a Solicitor, and *Charles Bowles*, Esq; were concerned in the said Breach of Privilege, and causing the said Earl to be arrested during the Sitting of Parliament :

Ordered, That the Serjeant at Arms attending this House, his Deputy or Deputies, do forthwith attach the Bodies of the said *Jeremy Fish Palmer*, *L. Hercy*, and *Charles Bowles*, for their said Offence, and keep them in safe Custody till the further Order of this House.—And this shall be a sufficient Warrant in that Behalf.

To *Richard Jephson*, Esq; Serjeant at Arms attending this House, his Deputy or Deputies, and every of them.

It does not appear from the Journal, that the issuing a *Capias* against a Peer in a criminal Information was complained of, or censured by the House of Peers, in this Case of the Earl of *Tankerville*.—The Matter was afterwards compromised, and nothing afterwards done upon it.

V. The next thing relied upon in Mr. *Wilkes's* Case, was the Statutes of the 12 & 13 *W. 3. c. 3.* and the 2 & 3 *Anna, c. 18.*—These Statutes relate intirely to *Civil Suits* between Subject and Subject, and do not extend to the King's Suits, or to criminal Prosecutions by Information or otherwise; and if any Inference may be drawn from them, they rather prove that Privilege was understood not to hold in those Cases against the Crown and the Publick.

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The next Authority was a Case in the Star-Chamber, of Sir *Baptist Hicks*, reported in *Hobbart* and *Popham's Reports*.

Hicks's Case. P. 16 Jac. 1.

Hobbart, p. 215. “ One sent a Letter *closed* and *sealed* to Sir *Baptist Hicks*, which was so delivered to his Hands, containing many despicable Scandals delivered *ironice*, as saying, You will not play the Jew nor the Hypocrite, and in that sort taunting him for an Alms-house and certain good Works that he had done; all which he charged him to do for Vain-glory. Whereupon Sir *Baptist Hicks* sued him in the Star-Chamber; and now upon the Hearing it was resolved, that though it were not proved that the Defendant had any way *published it*, yet the Court would hold Plea of it, and so did, and fined the Defendant, and sentenced him to wear Papers, and to make his Submission to Sir *Baptist Hicks* in *Cheapside*; yet an Action of the Case will not lie in that Case for want of Publication; but the King and Commonwealth *are interested in it*, because it is a Provocation to a Challenge and breach of the Peace.”

Pasche 16 Jac.

Sir *Baptist Hickes's Case* in the Star-Chamber.

Popham's Rep. Page 139. “ Sir *Baptist Hickes* having done divers pious and charitable Acts, *to wit*, had founded at *Camden* in *Gloucestershire* an Hospital for Twelve poor and impotent Men and Women, and had made in the same Town a new Bell tuncable to others, a new Pulpit, and adorned it with a Cushion and Cloth, and had bestowed Cost on the Sessions-house

“ house in *Middlesex*, &c. one *Austin Garret*, a Copyholder of
 “ his Manor of *Camden*, out of private Malice, had framed and
 “ writ a malicious and investive Letter to him;—in which in an
 “ ironical and deriding Manner he said, that the said Sir *Baptist*
 “ had done those charitable Works, as the proud Pharisee, for
 “ Vain-glory and Ostentation, and to have popular Applause,
 “ and further in opprobrious Manner taxed him with divers other
 “ unlawful Acts: And it was resolved by the Court, that for such
 “ *private* Letters an Action upon the Case doth not lie at common
 “ Law, for he cannot prove his Case, *to wit*, the publishing of it.
 “ But because it tends to the Breach of the Peace it is punishable in
 “ this Court, and the rather in this Case, *because it tends to a pub-*
 “ *lick Wrong*; for if it should be unpunished, it would not only deter
 “ and discourage Sir *Baptist* from doing such good Acts, but other
 “ Men also who are well disposed in such Cases; and therefore (as
 “ the Arch-bishop observed) this was a Wrong, 1. To Piety, in
 “ respect of the Cost bestowed on the Church. 2. To Charity, in
 “ regard of the Hospital. 3. To Justice, in consideration of the
 “ Sessions-house; and these Things were the more commendable
 “ in Sir *Baptist*, because he did them in his Life-time: For as
 “ *Mountague* Chief Justice observed, they who do such Acts
 “ by their Will, do shew that they have no Will to do them,
 “ for they cannot keep their Goods any longer. And he only took
 “ a Diversity where such a Letter concerns *publick Matter* as they
 “ did, or *private* in which Case it is not punishable.

“ But the Lord *Coke* said, that it was the Opinion of the Judges
 “ in the Lord Treasurer's Case, when he was Attorney, that such
 “ a private Letter was punishable in this Court, and thereupon

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“ he

" he had Instructions to exhibit an Information, but the Lord
 " Treasurer *jacens in extremis* was content to pardon him ; and
 " so it was resolved between *Wooton* and *Edwards*: And Sir
 " *Francis Bacon* Lord Chancellor said, that the Reason why such
 " a private Letter shall be punished, is, because that it in a man-
 " ner enforceth the Party to whom the Letter is directed to pub-
 " lish it by his Friends to have their Advice, and for fear that
 " the other Party would publish it, so that this compulsory Pub-
 " lication shall be deemed a Publication in the Delinquent ; and
 " in this Case the Party was fined at 500 *l.*

The next Case relied upon was, that of the King against *Sum-
 mers*, *Mich. Term*, 16 *Car.* 2. in the King's Bench, reported
 in 1 *Lev.* 139. which was cited to prove that a scandalous Letter
 was not a *Breach of the Peace*, but only *tending* to a Breach of
 the Peace.

1 *Lev.* 139. Dominus Rex versus Summers & Summers.

" Error d'un Judgment sur Indictment pur Recitant un Libel-
 " lous Letter Scandalous a Mellish, al un Feme que il intend a
 " Marier, devant les Justices de Peace al Guildhall. Et les Er-
 " rors assigne. 1. Que ceo ne fuit que un private Letter et ne
 " my puniable per *Indictment*. 2: Si soit, uncore nient devant
 " *Justices de Peace* mes Commissioners de Oyer et Terminer,
 " que ont parols en leur Commission de propalationibus ver-
 " borum. Et pur ambideux Causes. Hide Cheife Justice, al
 " primes teigne ceo erroneous. Mes, en Trin. Term. apres,
 " Hide esteut mort.—Twisden, Keeling & Windham teigne
 " ceo indictable quia *tend al Breach del Peace*, et devaut Jus-

“ tices del Peace, cibien come devaut Justices de Oyer & Ter-
“ miner.”

The Conclusion from these Authorities is, that the writing of a *private* Libel is not a Breach of the Peace, but only an Act tending to a Breach of the Peace; and that therefore a Libeller is not liable to be called upon to give Surety of the Peace, and if he was it would be nugatory; for if he wrote a second Libel, it would not be a Forfeiture of his Recognizance; but supposing a *private* Libel is not a Breach of the Peace, is it a Consequence that a *publick* Libel against the King and his Government is not?

In Answer to this kind of Reasoning, I shall transcribe what was said by the present Earl of *Hardwick*, when Attorney General, in the Case of the King against *Curl*, 1 *Geo. 2.* on an Information in the Court of King's Bench, for publishing an *obscene Book*, reported in Sir *John Strange's Reports*, Vol. II. p. 708, 709.

Mr. Att. Gen. “ What I insist upon is, that this is an Offence
“ at common Law, as it tends to corrupt the Morals of the King's
“ Subjects, and is against the Peace of the King.

“ Peace includes good Order and Government, and that Peace
“ may be broken in many Instances without an actual Force.

1. “ If it be an Act against the Constitution or civil Govern-
“ ment.

2. “ If it be against Religion. And.

3. “ If against Morality.”

Hawkins,

Hawkins, in his Pleas of the Crown, Part I. Pag. 126. says,
 “ Surety of the Peace is taken *against* the Breach of the Peace
 “ *before it happens.*”

Can any Thing appear more absurd, than that a Member of Parliament may be imprisoned for Want of Surety against his breaking the Peace *before* it happens? and that when he hath *actually broke the Peace*, he is not liable to be arrested or to be brought to Justice for it?

VI. The Resolution of the House of Commons in 1675, in relation to Privilege, is express that it does not extend to the Cases of Treason, Felony, and *Breach of the Peace*. Breaches of the Privileges of either House of Parliament, or of their Members, are generally taken up, like other Matters of Privilege and Elections, with Spirit, and frequently treated with Warmth; and if Resolutions carrying apparent Contradiction or Difficulty with them were to be found on the Journals in one Case as in the other, it would not be to be wondered at. The greatest Sticklers for Privilege have not always been the Persons the most knowing and most conversant in the true Origin and Extent of it, or animated with the justest Notions of the Liberties of the Subject at large.—Let the Reader consult Mr. *Auchetell Grey* on the Subject of Debates concerning Privilege, and he will readily subscribe to this Opinion.—In a Case thus circumstanced, or perhaps in any other, it is not the Office of a Court of common Law, by Implication or Construction, to vary, alter, or explain away the Meaning of a Resolution of the House of Commons, or to say that, although the Words of the Resolution are general *Breach of the Peace*, yet the House of Commons did not thereby mean
 to

to include all Breaches of the Peace in general, but only such as require the Offender to give Security of the Peace in particular. By the Words Treason, Felony, and Breach of the Peace, it is not impossible they might intend, under the Expression Breach of the Peace, to include all Offences at common Law less than Felony, which amount to a Breach of the Peace.

In the Statute of the 8 *Hen.* 6. c. 10. relating to the issuing the *Capias* in criminal Suits, previous to the Exigent, in order to the proceeding to Outlawry, the Suits are described to be *Indictments or Appeals in Cases of Treason, Felony, and Trespass*; it was never doubted but that the Words *or Trespass* included all Indictments for Crimes of a superior Nature between that and Felony.

Lord Ch. J. *Coke*, in his 4 *Inst.* Tit. *Lex & Consuetudo Parliamenti*, lays it down as a Rule—"that
 " Judges ought not to give any Opinion of Matter of Parli-
 " ment, because it is not to be decided by the common Laws,
 " but *secundum Legem & Consuetudinem Parliamenti*: And
 " so the Judges in divers Parliaments have confessed."

Coke, 4 *Inst.*
 Page 15.

In *Thorpe's Case*, set forth in the Parliament-Roll of the 31 *H.* 6. N^o 26, 27, 28. published in *Prynne's* 4th Part of his Register of Parliamentary Writs, p. 678. the Question was, Whether *Thorpe*, who was then Speaker of the House of Commons, was intitled to Privilege, and to be discharged out of Execution on an Action of Trespass—the Trespass having been committed since the Beginning of the then present Parliament, and the

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Judgment

Judgment and Execution obtained during an Adjournment of the said Parliament? The Lords in Parliament stated the Question to the Judges, and asked of them whether *Thorpe* ought to be delivered from Prison by force and virtue of the Privilege of Parliament or no?

“ To which Question the Chief Justice, in the Name of *all the Judges*, after Communication and mature Deliberation had among them, answered and said, That they ought not to answer to that Question, for it hath not been used afore-time that the Judges should in any wise determine the Privileges of this high Court of Parliament.”

There are however several Exceptions to this Rule—particularly in the Case of Writs of Privilege, the Judges of the Common Law have by an express Clause in the Writ *si ita est*, been under a Necessity to *determine* what was and what was not the Privilege of Parliament; they have been obliged to do the same on the Construction of the modern Laws relating to Proceedings against privileged Persons in civil Suits.

VII. In determining the present Question concerning Mr. *Wilkes*, the Court of Common Pleas seem not to have attended to the Difference there is between the Privilege of Peers and that of Members of the House of Commons, or between *criminal* and *civil* Prosecutions; but seem to have held, that Privilege was equally, and in all Cases, applicable to both.

It will not be questioned, that the Privilege of the Members of the House of Commons is a meer *personal Privilege*, and was originally

originally confined to *personal Actions and Suits* brought against them and their Servants only.

The Claim of Privilege demanded by the Commons in the 5 H. 4. as belonging to the Lords, Knights, Citizens, and Burgesſes coming to Parliament, their People and Servants, is in theſe Words, *Que ne devoient pur aſcun Dette, Account, Treſpaſs, ou autre Contraēt queconque eſtre arreſtuz ou en aucune Manere empriſonez*, during their coming to, ſtaying at, and returning home from, Parliament.

The King's Anſwer to this Petition was, That there was already a ſufficient Remedy in the Caſe. The whole Record is printed in *Prynne's* 4th Part of his Register of Parliamentary Writs, p. 722.

The Commons Claim of Privilege, in the 17 Ed. 4. is confined to civil or perſonal Suits.

The Declaration of the Houſe of Commons in 1675, and all the Acts of Parliament which have been ſince made relating to Privilege, took their Riſe from the Claim or Abufe of Privilege in *civil Suits* between Subject and Subject only: And if this Privilege had been underſtood to extend to all criminal Proſecutions, except for Treason and Felony, and Surety of the Peace, no good Reaſon can be aſſigned why it ſhould not have been plainly ſo expreſſed in the Records and Journals of Parliament.

The Commons Reſolution in 1675 relating to Privilege is in theſe Words: " That by the Laws and Uſage of Parliament, Privilege
" of Parliament belongs to every Member of the Houſe of Com-

“ mons, in all Cases except Treason, Felony, and Breach of the
 “ Peace, which hath often been declared in Parliament, without
 “ any Exception of Appeals before the Lords.” The Proceed-
 ings in the Journals, which lead this Resolution, are printed in
 the Appendix, N^o 5.

VIII. In 1626, the Earl of *Arundell* was committed to the
 Tower during the actual Sitting of the Parliament, for a Misde-
 meanor personal to the King; and the House of Peers, upon
 that Occasion, came to the following Resolution :

Lords Journal,
 18 April 1626,
 pag. 230.

That the Privilege of this House is, That no
 Lord of Parliament, sitting the Parliament, or
 within the usual Time of Privilege of Parliament,
 is to be imprisoned or detained, without Sentence or Order of
 the House, unless it be for Treason, Felony, or for refusing to
 give Security for the Peace.

Mr. *Prynne*, in the 4th Part of his Register of Parliament
 Writs, Page 701, hath published from the Parliament Roll the
 Case of *Hugo le Despenser* the younger, then a Peer of the
 Realm, for striking *John de Ros*, another Peer, or Knight of
 the Parliament, who gave him ill Language, and offered to strike
 him in the Parliament, An. 9 Ed. 2. for which they were both
 committed to the *Marshalsea*.— The Entry is, *Et quia premissa*
commissa videntur in lasonem Pacis, &c. Ideo committitur
Marescallo quousque, &c.

Mr. *Selden*, in his Treatise of the Privilege of the Baronage of
England, expresses himself as follows, Ch. 10. Title—*No Pro-*
cess in civil Actions to be awarded against the Body of a Baron :

“ No

“ No Baron of the Parliament or Barones is to be arrested by
 “ a *Capias* upon Action of Debt, Account, Trespass, or the
 “ like, but they are to be distrained only, and pay Issues returned
 “ for an Appearance. The Reason of this was anciently, be-
 “ cause the *Capias* in such Cases goes out only upon *nihil habet*,
 “ returned by the Sheriff, which could not be for a Baron, who
 “ was ever to be supposed to be seised of his Barony, by which
 “ he might be distrained and lose Issues. Although the Rea-
 “ son fails now in those that have not more than the Names
 “ alone of their Baronies, yet the same Law still remains, but this
 “ is limited to Actions between Party and Party; for in Cases
 “ of Rescues, Felonies, or the like, where the Offence is imme-
 “ diately to the King, a *Capias* lies against a Baron of the Parlia-
 “ ment (*b*).”

Lord Chief J. *Hale*, in his History of the Pleas of the Crown,
 Vol. II. p. 199. expresses himself thus:

II. “ Against whom Process of Outlawry shall issue upon
 “ an Indictment.

“ Altho’ in civil Actions between Party and Party regularly
 “ a *Capias* or *Exigent* lies not against a Lord of Parliament of
 “ *England*, whether secular or ecclesiastical, yet in case of an
 “ Indictment for Treason or Felony, yea, or but for a Tres-
 “ pass *vi & armis*, as an Assault or Riot, Process of Out-
 “ lawry shall issue against a Peer of the Realm, for the Suit is
 “ for the King, and the Offence is a Contempt against him :
 “ And therefore, if a Rescue be returned against a Peer, 1 *H.*

(*b*) *Selden*, Vol. III. p. 1546.

“ 5. or if a Peer of Parliament be convict of a Disseisin with
 “ Force, *H. 32 Eliz. B. R. Croke, n. 9.* Lord *Stafford's*
 “ Case (*i*), or denies his Deed, and it be found against him, *M.*
 “ 38 & 39 *Eliz. B. R. Croke, n. 26.* the Earl of *Lincoln's*
 “ Case (*k*), a *Capias pro Fine* and *Exigent* shall issue, for the
 “ King is to have a Fine; and the same Reason is upon an
 “ Indictment of Trespass or Riot, and much more in the Case
 “ of Felony.”

IX. In the Year 1625, 1 *Car. 1.* the Lords, after serious Debate of the Privilege of Parliament, ordered and declared, That *none are to be privileged against any Statute of Recusancy.* [Lords Journal, p. 67.]

15 *Dec.* 1640. upon the Complaint of the Lord Viscount *Mountague*, that his Lordship and divers other Peers were indicted for Recusancy, *now sitting the Parliament*, the Lords ordered that Lord Viscount *Mountague* and the rest of the Peers should enjoy and be allowed their Privilege of Parliament as Peers of this Realm, and that the said Indictment so prosecuted against them as aforesaid should be stopped during the Continuance of the Parliament, and the Time of Privilege of the same. [Lords Journal, p. 100.]

In the Year 1641 the House of Commons interposed, and, as appears by the following Transcript from their Journals, opposed it, and insisted Privilege did not extend to Indictments for Offences done out of Parliament, or to Crimes against the Publick.

(*i*) *Cra. Eliz.* 170.

(*k*) *Cra. Eliz.* 503.

Die

Die Martis, 17th Augusti 1641, post Meridiem.

“ Mr. Holles, Sir Philip Stapleton, Sir John Commons Journ.
 “ Colpeper, Mr. Greene, Mr. Strode, Sir Edward Vol. II. p. 261.
 “ Hungerford, Mr. Morley, Sir Henry Milmy, Sir Walter
 “ Earle, Sir John Clatworthy, Sir William Armyn, Sir Ar-
 “ thur Haslerigg, Mr. Pym.

“ This Committee is to prepare Heads for a Conference with
 “ the Lords, concerning the disarming of Recusants.

“ Mr. Pym reports from the Committee appointed to pre-
 “ pare Heads for a Conference to be desired with the Lords con-
 “ cerning the Proceedings against Recusants.

“ The First Head agreed upon is this ; That, because former
 “ Directions about the disarming and convicting of Recusants
 “ have been frustrated, therefore to desire the Lords, that Com-
 “ missioners or Committees may be forthwith sent into the
 “ Counties of most Danger (as *Yorkshire, Lancashire*, and other
 “ Counties) authorized by Ordinance of Parliament, to see that
 “ the Papists be disarmed in those Counties, and that they may
 “ have Power to examine where the Defect hath been, that the
 “ disarming and convicting of them hath not been put in Execu-
 “ tion, and to enquire the Cause thereof.

“ Next to let the Lords understand, that the Conviction of di-
 “ vers Recusants have been hindered under Pretence of Privilege
 “ of Parliament from their Lordships ; and to declare unto their
 “ Lordships that the Opinion of this House is, that no Privilege
 “ of

“ of Parliament ought to be allowed in this Case, for these Reasons:

“ 1st. Privilege of Parliament is not to be allowed in Case of Peace, if the Peace be required.

“ 2d. It is not to be allowed against any Indictment *for any Thing done out of Parliament.*

“ 3d. It is not to be allowed in case of Publick Service for the Commonwealth, for that it must not be used *for the Danger of the Commonwealth.*

“ 4th. It is in the Power of the Parliament, and *doth not bind the Parliament itself*; so that their Lordships may withdraw their own Privilege as they see Cause, and therefore to declare, that in these Two Cases, of disarming of Recusants and convicting of them, no Privilege of Parliament ought to be allowed.”

The Lords agreed to the Disarming of Recusants, as well Peers as others; but gave no Answer to the above Propositions of the Commons concerning Privilege.

In 1666, when Popery was become more fashionable, the House of Peers upon Signification,

Die Veneris 1^o Die Febr. 1666.

Lords Journal, p. 412. “ Upon Signification to this House that the
“ Right Honourable *Marmaduke Lord Langdale*,
“ a Peer of this Realm, is indicted for Recusancy, *now sitting*
“ *the*

“ *the Parliament*, which this high Court conceives to be contrary to the Rights and Privileges of the Peers of this Realm and Lords of Parliament, after Consideration had thereof, It is ordered by the Lords Spiritual and Temporal in this High Court of Parliament assembled, that the Lord *Langdale* and all other Members of this House, *also their Wives, Children, and menial Servants, and all Widows of Peers* shall be and are freed and discharged from any such Indictments as aforesaid; and that such Indictments against any of the Parties shall be forthwith brought into the King’s Bench by a *Certiorari*, and the King’s Attorney shall enter a *Noli prosequi* upon the same, that thereby they the said Lords of Parliament, their Wives, Children, and Servants, and Widows aforesaid may enjoy the Privilege of this House, both during the Time of this Session of Parliament, and for the Space of Twenty Days after the End of the same.

Die Mercurii, 11 Die Febr. 1673.

“ Upon Report made by the Lord Privy-Seal from the Lords Committees appointed to consider the Privileges of the Peers of *England*, that their Lordships having considered the Matter referred to them how far the Sons of Peers may have Privilege of Parliament, are of Opinion that Peers Children being under Age, unmarried, and living in their Fathers Houses, ought to have the Privilege of Parliament from Indictments and Prosecutions for Recusancy.

Lords Journal,
P. 353.

P

“ Ordered,

" Ordered, That this House agrees with the Committee in
 " the said Vote."

X. Privilege of the Members of the House of Commons hath
 been universally understood not to extend to Proceedings for *Re-*
covery of the King's Debts.

Mr. *Thomas Fitzherbert*, 35 *Eliz.* was taken in Execution
 after his Election, but before the Return, upon a *Capias Utlaga-*
tum after Judgment, for 1400 *l.* at the *Queen's Suit*.—The
 House, after consulting with all the Judges, denied him Privilege.
 [*Prynne Brev. Par.* part 4. p. 646.] The Determination of the
 House is thus expressed in Sir *Simon Dewe's Journal* [page 518.]

" The Judgment of the House was, That *Thomas Fitz-*
 " *herbert* was, by his Election, a Member thereof; yet that he
 " ought not to have Privilege in Three Respects. First, because
 " he was taken in Execution before the Return of the Indenture
 " for his Election: Secondly, *because he had been outlawed at*
 " *the Queen's Suit, and was now taken in Execution for her*
 " *Majesty's Debt*: Thirdly and lastly, in regard that he was
 " so taken by the Sheriff, neither *sedente Parlamento*, nor
 " *eundo*, nor *redeundo*."

The Exchequer Process, which issues twice a Year to every
 Sheriff in *England* for levying the King's Debts, usually called the
 Long or *Prerogative Writ*, commands the Sheriff, in case the Goods
 and Chattels, Lands and Tenements, of the Debtors shall not be
 sufficient, then the Sheriff is not to omit for any *Liberty*, but is to
 take

take the Bodies of all such Debtors (*except Peers and Peereffes*) and keep them in Prison until Payment. When the Writ was in Latin the Exception was (*Magnat' Dominis et Dominabus exceptis*) *Vernon's Considerations on the Exchequer*, printed in 1642, page 18.

XI. The Earl of *Scarsdale* and Lord *Duplin*, who in the Year 1715 had been committed to the Tower on Suspicion of Treason or treasonable Practices, on their being brought up by *Habeas Corpus*, were held to Bail by Mr. Justice *Price*; what he did was held and declared to be Law by the other Judges.

The King against Lord *Scarsdale* and Lord *Duplin*.

Trin. 2d Geo. 1. B. R.

" These Lords having been committed to the
 " Tower by my Lord *Townsend*, one of the
 " Secretaries of State, for treasonable Practices
 " against the Government, upon the late Suspension of the *Hab.*
 " *Corp.* Act, which being expired upon the 24th Day of *May* last,
 " they applied upon the 26th Day of *May* to Mr. Baron *Price* at his
 " Chambers for an *Hab. Corp.* according to the 31 *Car. 2. c. 2.*
 " which being granted, and they (being brought up to him from
 " the Tower) did insist upon their Privilege, as Peers, to be dis-
 " charged, a Peer not being required to give Bail for a Misde-
 " meanor; but the Judge being of an Opinion that they ought
 " to give Bail, else he could not discharge them, they waved
 " their Claim of Privilege, and entered into Recognizances
 " (with Bail) to appear at B. R. the First Day of this Term, which
 " was

Vyner's Abridgment,
 Vol. III. Title Bail
 in criminal Cases. p.
 534.

" was upon the First of *June*, and they appearing accordingly, it was
 " moved by their Counsel that they might be discharged, and not
 " continued upon their Recognizance till the last Day of the
 " Term; and my Lord Marlborough's Case in the House of
 " Lords was quoted, but it was refused by the Court; and
 " *Parker*, Ch. J. said, that the Court could not take Notice of
 " what they were committed for; that they had nothing be-
 " fore them but the Recognizance, and they could not take
 " Notice of the Warrant of Commitment, or for what they stood
 " committed, and that the Lords must be continued upon their
 " Recognizance till the last Day of the Term, according to the
 " Course of the Court, the whole Term being in Law accounted
 " for as one Day. The same Day (these Lords going immediately
 " into the House of Peers) Debates arose upon this Matter, and
 " the Opinion of the Judges then present being (as it was de-
 " livered by the Ch. J. *King*) that Baron *Price* and the Court
 " had done their Duty, and that the Judge was obliged to take
 " Bail upon the *Hab. Corp. Act*, and ought not to have discharged
 " the said Peers; but this Debate being adjourned to inspect
 " their Journals for Precedents, &c. upon the 4th of *June* the
 " Court of B. R. was again moved to discharge this Recognizance,
 " to which Mr. Attorney General consented, saying, he had re-
 " ceived his Majesty's Command to consent to the Discharge of
 " the said Recognizance, &c."

The Entries relating to this Matter in the Journals of the House
 of Peers are as follow :

Die Veneris 1^o Junii, 1716.

“ Notice being given to the House that the Earl of *Scarsdale*
 “ and the Lord *Hay*, who had been committed pursuant to the
 “ Consent of this House, on Suspicion of Treason or treasonable
 “ Practices, were now under Bail in the King's Bench :

“ And the House being thereupon moved that the Proceedings
 “ in the Journal in the Year 1692, in relation to the Complaint
 “ of the Earl of *Huntingdon* and other Lords, being under
 “ Bail in the King's Bench upon Warrants of Commitment of
 “ High Treason, might be read :

“ The Earl of *Scarsdale* acquainted the House, That he having
 “ been committed to the Tower by Warrant as above-mentioned,
 “ and lately bailed, did this Day appear in the Court of King's
 “ Bench, and there moved for Discharge of the said Bail, the
 “ Court refused to discharge the same, the Attorney General not
 “ being there.

“ Then the Proceedings in the Journal in the Case of the Com-
 “ plaint above-mentioned being read,

“ It was moved, that the Judge who took the said Bail might
 “ acquaint the House with the Fact, and the Grounds and Reasons
 “ of taking such Bail.

“ And thereupon Mr. Baron *Price* was heard touching the
 “ same, as were also some other of the Judges heard in relation
 “ to the Matter of bailing of Prisoners.

“ Then the standing Order of this House concerning the Com-
 “ mitment of Peers being read,

Q

“ And

“ And a Debate arising touching the Matters afore-mentioned,

“ It was proposed, that the Consideration of the subject Matter thereof be referred to the Committee for Privileges to meet
“ To-morrow Morning.

“ And it being proposed that the Committee meet on *Monday*
“ next.

“ The Question was put, that the Committee for Privileges
“ do take the subject Matter of the said Debate into their Consideration on *Monday* next, at Eleven of the Clock.

“ It was resolved in the Affirmative.

“ Ordered, That the Committee for Privileges do take the subject Matter of the Debate above-mentioned into their Consideration on *Monday* next, at Eleven of the Clock, and report
“ to the House.”

Die Luna 4^o Junii, 1716.

“ The Earl of *Clarendon* reported from the Lords Committees
“ to whom the Consideration of the subject Matter of the Debate arising on *Friday* last, touching the Earl of *Scarsdale* and
“ the Lord *Hay* being under Bail in the King's Bench, was referred as follows, viz.

“ That the Committee having been informed by one of the
“ said Lords concerned, That the Attorney General had this
“ Morning acquainted the said Court of King's Bench by his
“ Majesty's Command, that it was his Majesty's Pleasure the
“ Bail

“ Bail given by the said Lords should be discharged, the same
 “ was discharged. Accordingly the Committee therefore offer
 “ it to the Consideration of the House whether they should
 “ proceed in the Matter to them referred.

“ Ordered, That the said Committee be discharged from pro-
 “ ceeding any further in relation to the said Matter to them re-
 “ ferred.”

The Author will here for the present close what he hath to offer on the Determination of the Court of Common Pleas for discharging Mr. *Wilkes*, with observing, 1. That Privilege hath been always considered to be a Concession of something against Law or common Right, and is therefore to be construed strictly against the Person claiming it.

2. That it is difficult to believe, that both or either House of Parliament ever did or ever will avow, that the Law-makers in each House and their Servants shall, for Seven or more Months in every Year, be the privileged or licensed Law-breakers, who may during all that Time, with Impunity, counter-act, in a long List of Instances, every Law and Rule of Decency and good Order, which every other Subject is bound to observe at his Peril towards the King and his Laws, without their being amenable or responsible for their Offences in the King's usual Courts of Justice, either in or out of Parliament.

3. That, while these privileged Law-breakers are thus protected from being called to answer for any supposed Offences they are charged to have committed, they are nevertheless to be at Liberty to worry and harrafs any of their Fellow-subjects, by as many
 2 frivolous,

frivolous, expensive, and vexatious Suits, as their Malice or Folly may induce them to commence for any real or supposed Injury they may suggest to have received from unprivileged Subjects.

4. Former Times were Strangers to Doctrines and Opinions of this Sort—that they are *new*, and were not, till upon the late Occasion, understood to be the Law of the Land, appears by the Surprise, the Alarm, and Astonishment, with which the late Determination for discharging Mr. *Wilkes* from his Commitment hath affected the sensible Part of the Community, more particularly those acquainted with *Order*, and whose Studies and Situation render them conversant with Questions of this Nature.

In handling a Subject of this great Magnitude, in which the Liberties of the Members of the House of Commons, their Followers and Servants, *on one Side*, and of every other of the King's Subjects *at large* on the other, are consequentially interested and concerned, it was necessary for the Author to treat the Arguments on which the Determination in Question was founded with Freedom; it was what he and every Subject in *Great Britain* was intitled to do. In doing this, he hath endeavoured to conduct his Inquiry with Temper, Candour, and fair Argument. Whether he hath or hath not done so, the Publick will judge; which, that they might be enabled to do with Precision, was his Reason for publishing his Authorities at large, rather than referring for them to a Variety of Collections in Print or MS. not in the Hands of every Reader.—The Author flatters himself he hath at the same Time preserved that Decency and Respect to the Persons and Opinions of the Four learned and reverend Judges who concurred
in

in discharging Mr. *Wilkes* that is due to their high Stations and Abilities. If any of the Reasonings or Authorities made use of by the Author shall be so fortunate as to place the present Question in a different Light from what it appeared in *on the Argument at the Bar*, instead of their being displeased with him for the Performance, it will rather conciliate to him their Goodwill and Esteem, they having, he is assured in their determining the present Question, had nothing in view, or in their Wish, but Truth and sound Judgment.

R

APPENDIX.

A P P E N D I X.

*Adhuc Placita coram Baronibus de Scaccario apud Westm. de N^o I.
 Termino Sanctæ Trinitatis Anno Regni Regis Edwardi post
 Conquestum Angliæ Quarti, Decimo Sexto, Rot. 18.*

MEMORAND' quod Johannes Tayllor jun' de Civi- Devon.
 tate Exon' in Com' præd' Merchant *qui tam pro*
Domino Rege quam pro seipso sequitur ven' coram Baronibus hujus
 Scaccarii duodecimo die Julii hoc termino in propria persona sua
 et sacrum' præstitit corporale quod licet in statuto parlamento
 Domini H. nuper de facto et non de jure Regis Angl' sexti anno
 regni sui vicesimo apud Westm' tent' edito inter cetera pro coi'
 utilitate regni Angl' ordinatum & stabilitum existat quod nullus
 Custumar' neque Contrarotlator Custumarum Clerici Custum'
 Deputat' seu Ministri nec eorum servientes vel factores neque
 Scrutatores Contrarotlat' aut Supervisores Scrutinorum neque
 eorum Clerici Deputati Ministri aut factores habeant aliquas Naves
 de suis propriis nec eument aut vendent per viam aut colorem
 Mercandis' nec eos intromittent de frectagio Navium aut habeant
 sive occupent aliquas Wharvas neque Keyas aut teneant aliqua
 Hospitia sive Tabulas vel sint factores sive attorn' pro aliquo
 Mercatore indigena vel alienigena nec sint Hospites alicui Mer-
 catore alienigene sub poena quadraginta librarum Domino Regi
 forisfaciend'

forisfaciend' tocies quociens ipsi fecerint e contrario. Scilt' una medietate huiusmodi quadraginta librarum Domino Regi et altera medietate inde ill' qui prosequi voluit in huiusmodi casu versus aliquem talem contrm' facientem prout in eodem statuto plenius continetur Quidem tamen Magist' Johes' Attewylle de Exon' in Com' prædicto Clericus & Deputatus Nichi' Heynescote nuper unius Coll' Custum' & subsid' Domini Regis in portub' Exon' & Dertmouth statutum præd' minime ponderans 18^o die Septembris ultimo preterito præfato Nicho' Heynescote tunc Coll' ibm' apud Exon' in Com' præd' emit de Johe' Offlore Mercatore de Britan' causa Merchandisandi 7 pecias de Creste Cloth pro novem libris sex solidis & octo denariis contra formam statuti prædicti Unde idem Johes' Tayllour petit avisament' Cur' in premissis Et quod prædictus Johes' Attewylle de & sup' premissis respondeat juxta formam statuti prædict' dco' Dno' Regi quam præfato Johi' Tayllour & idem Johes' Tayllour petit medietatem forisfacture præd' juxta formam & effectum ejusdem statuti.

Et super hoc Concord' est quod mander' præf' Johi' Attewylle per bre' sub sigil' huius scaccarii effendi hic &c. ad respond' tam Dno' Regi quem præfato Johi' Taylor in premissis Et hoc sub pæna quingentarum librarum Quas &c. Et precip' ei in forma præd' Ita &c. a dies sci' Michis' in 15 dies Et idem dies dar' est præfato Johi' Tayllor ad quem diem idem Johes' Tayllor ven' hic in propria persona sua & petit ut prius &c. Et dcus' Johes' Atwyll per Godfrim' Spark & Simon' Marchall conjunct' & divis' Attorn' suos ex gra' Cur' admissos Et petit audit' informac' prædict' Et ei legitur &c. Qua audita & inrellecta petit diem ex gra' Cur' sibi dare ad respondend' Dno' Regi in premissis Quod ei concessum est Et super hoc

hoc dat' est dies hic prefato Johi' Attewylle eodem statu quo nunc
usque Octab' sci' Martin' Et idem dies dat' est prefato Johi'
Tayllor.

Ad quem diem idem Johes' Tayllor ven' in propria persona
sua & petit ut prius &c. Et idem Johes' Attweyll per prefat' Attorn'
suos Et protestando quod materia in informatione prædicta content'
minus sufficiens est in lege ad quam ipse necesse non habet per
legem terræ respondere pro plito' dicit quod dictus Dominus Rex
aut prædict' Johes' Tayllour ipsum Johem' de pro aut in premissis
seu aliquo premissor' impetrar' seu occonare' non deb' nec idem
Johes' erga ipsum Dominum Regem seu prefat' Johem' Tayllor
proinde aut aliquo inde onerari deb'. Quia dicit quod ipse non
emit de dco' Johe' Flore de Britan' in dict' informacione specifi-
cat' nec de aliquo alio dcas' septem pecias de Creste Cloth in dca'
informacione specificat' nec aliquam inde parcelam nec aliquam
peciam de Creste Cloth prout per informacionem prædictam
superius supponitur Que omnia & singla' idem Johes' Attewylle
parat' est verificare prout Cur' &c. Unde non intendit quod præd'
Dominus Rex aut ipse Johes' Tayllor ipsum Johem' Attewylle de
pro aut in premissis impetere velit Et petit judicium &c.

Ad quod Willus' Huse qui pro Domino Rege sequitur pro
eodem Domino Rege ac idem Johes' Tayllor in propria per-
sona sua dic' quod prædictus Johes' Attewyll emit de dco' Johe'
Flore dcas' septem pecias de Creste Cloth modo & forma quibus
per informacionem prædict' superius supponitur Et hoc iidem
Willi' & Johes' Tayllour petunt quod inquiratur per patriam &c.
Et prædictus Johes' Attewyll dicit ut prius & petit silit' Ideo fiat

S

inde

inde Inquis' Et precip' Vic' Com' prædict' quod non omittat &c. et
 ve' fa' hica *die sci' Hillarii in 15 dies* 18 ram Milites &c. de visn' ville
 Exon' in Com' prædicto quorum quilt' &c. per quos &c. Et qui
 nec &c. ad recogn' in premissis Et idem dies dat' est tam pefat'
 Johi' Tayllor quem pefat' Johi' Attewylle.

Ad quem diem idem Johes' Tayllor ven' hic in propria persona
 sua *Et prædict' Johes' Attewylle per dcm' Grdfrm' Speck Attorn'
 suum* Et Vic' videlt' Carolus Dynhnem Armig' retorn' bre' cum
 pannello de noibus' Jur' Et Jur' non ven' Ideo precip' Vic' quod ipsos
 Jur' distr' per terras &c. ita &c. a die pasche in 15 dies & preter
 Jur' præd' ve' fa' hic ad eundem diem decem tales probos & leg'
 homines de ballia' sua de visn' Civitatis sive Ville Exon' præd' ne
 Inquis' præd' ulterius ob defect' Jur' reman' capiend' &c. Et idem
 dies dat' est tam pefat' Johi' Taylor quem pefat' Johi' Atte-
 wyll.

Ad quem diem præd' Johes' Taylor in propria persona sua ven' &
 petit &c. & præd' Johes' Attewylle ven' per prædict' Attorn' suum Et
 dicit quod dict' Dominus Rex nec idem Johes Tayllour ipsum
 Johem' de pro aut in premissis seu aliquo premissorum impetere
 seu acconare' non debet nec idem Johes' Atwyll erga ipsum
 Dominum Regem seu eundem Johem' Tayllor pro aliquo inde
 onerari deb' Quia dic' quod post prædict' 15 sci' Hillarii a quo
 die usque hunc diem processus prædict' ultimo fuit continuat' dcus'
 Dominus Rex nunc per literas suas patentes quas idem Johes' hic
 in Cur' profert Quarum dat' est apud Westm' tertiodecimo die
 Februarii anno regni dci' Domini Regis sextodecimo de gra' sua
 spial' ac excerta scientia & mero motu suis perdonavit remisit &
 relaxavit pefa' Magro' Johi' per nomen Johis' Attewille de Exon'
 in

in Com' Devon' Clerici & Deput' Nichi' Heynscote nup' unius Coll' Custumar' & Subsidior' ipsius Dni' Regis in portub' Exon' & Dertmouth alias dict' Johannis Attewylle de Civitate Exon' alias dict' Margri' Johis' Attewille de Exon' in Com' Devon' Clici' & Deputati Nichi' Heynscote nuper unius Collector' Custumar' & Subsidior' dci' Dni' Regis in portub' Exon' & Dertmouth alias dict' Magri' Johis' Attwyll sen. quocunque alio noine' idem Johes' censeatur omnimod' demand transgressionis offensas contemptus & impeticoes per ipsum Johem' contra formam tam quor'cumque Statutor' Ordinationum & Provisionum quor' aliqua Secta versus eundem Johem' per bill' vel per bre' de premunire fac' seu alio modo quocunque pro aliqua materia ante dict' 13 diem Februar' dco' Anno 16^o fact' fieri valeat quam quorumcumq' alior' Statutor' fact' sive perpetrat' Et in super dict' Dnus' Rex perdonavit remisit & relaxavit eidem Johi' *sectam pacis dci' Dni' Regis* que ad ipm' Dnm' Regem versus ipm' Johem' pertineat pro omni modis prodicionib' Murdris Raptib' Mulier' Rebellionib' Insurrectionib' Feloniis Conspirationib' cambipartiis manutenenciis confederationibus riotis routis conventiculis illicit' & umbraciis ac aliis transgressionib' offensis negligens extortionib' misprisionib' ignorans contemptibus concealment' forisfact' & decepcoib' per ipsum Johem' ante eundem 13 diem Februar' dco' Anno 16^o silit' fact' aut perpetrat' Ac etiam utlagat' si que in ipsum Johem' hujus occasionibus seu earum aliqua fuint' promulgat' & firmam pacem dci' Dni Reg' ei inde concessit Nec non dict' Dnus' Rex perdonavit remisit & relaxavit eidem Jnhi' omni mod' fines adjudicat' sive adjudicand' Amerciamenta Exitus forisfact' debita & compota per ipsum Johem' eidem Dno' Regi ante dict' 13 diem Februarii dco' anno 16^o qualic'cumque debet' sive pertinen' de omni mod' actiones.

actiones executiones sectas impeticoes querelas penas & demand' quas dictus Dnus' Rex solus vel ipse Dnus' Rex conjunctim cum aliis personis vel alia persona huiusmodi finibus am'ciament' exit' debit' & compotis eidem Dno' Regi ante eundem 13 diem Febr' qualiter cumque debet' sive pertinet' prout in literis illis patentibus plenius continentur Quarum quidem literar' patentin' tenor sequitur in hec verba.

Edwardus Dei gracia Rex Anglie & Francie & Dominus Hibernie Omnib' ad quos presentes lre' pervenerint saltm' Sciatis quod de gra' nra' spial' ac ex certa scientia & mero motu nostris perdonavimus remisimus & relavimus Johi' Attewille de Exon' in Com' Devon' Clico' & Deputato Nichi' Heynscote nuper unius Collector' customar' & subsiduor nrar' in portub' Exon' & Dertmouth alias dicto Johanni Attewylle de Civitate Exon' alias dicto Magro' Johi' Attewille de Exon' in Com' Devon' Clico' & Deputato Nichi' Heynscote nup' unius Collector' customar' & Subsidior' nrar' in portub' Exon' & Dartmouth alias dicto Magro' Johi' Attwyll sen' quocumque alio noine' idem Johes' censeatur omnimod' demand' transgressiones offensas contemptus & impeticoes per ipsum' Johem' contra formam tam quor'cunque statutorum Ordinacion' & Provision' pretextu quor' aliqua secta versus eundem Johannem per bill' vel per bre' de premunire fact' seu alio modo quocumque pro aliqua matia' ante dat' presenciu' fact' fieri valeat quam quorumcumque aliorum Statuorum fact' sive perpetrat' Et in sup' perdonavimus remisimus & relaxavimus eidem Johanni sectam pacis nostre que ad nos versus ipsum Johannem pertinet pro omni modis prodicionibus murdris' raptibus

tibus Mulier' rebellionibus insurrectionibus Feloniis Conspira-
 tionibus cambipartiis manutenentis confederationibus riotis routis
 Conventiculis illicitis & imbraciariis & aliis transgressionibus
 offensis Negligenciis extorcionibus mispressionibus ignoranciis
 contemptibus concealmentis forisfactis & deceptionibus per ipsum
 Johannem ante dat' presenciu' Liter' fact' aut perpetrat' Acetiam
 Utlagar' sique in ipsum Johannem hiis occols' seu eorum aliqua
 fuint' promulgat' & firmam pacem nostram ei inde concedimus.
 Necnon perdonavimus remissimus & relaxavimus & per pre-
 sentes perdonamus remittimus & relaximus eidem Johanni omni-
 mod' fines adjudicat' sive adjudicand' Amerciamenta exitus forisfact'
 debita & compota per ipsum Johannem nob' ante dat' presenciu'
 qualir' cumque debir' sive pertinen' ac omnimod' Accoes' execu-
 tiones sectas impeticiones querel' penas & demand' quas nos solus
 vel nos conjunctim cum aliis personis vel alia persona hemus
 seu here' potimus versus ipsum Johannem pro aliquibus hujus-
 modi finib' amerciamen' exitib' debitis & compotis nob' ante dat'
 presenciu' qualir' cumque debir' sive pertinen' aliquo Statuto Actu'
 ordinatione provisione restriccoe' seu matria quacumque in contr'
 inde edit' fact' ordinat' seu provis' non obstant' In cujus rei testi-
 moniu' has literas nostras fieri fecimus parentes Teste me ipso apud
 Westm' tercio decimo die Februarii anno regni nostri sexto de-
 cimo Et unde idem Johannes detulit hic bre' dicti Domini Regis
 de Magno Sigillo suo Thes' & Baronibus hujus Seaccarii direct'
 cujus quidem bris' tenor segnitur in hec verba.

Edwardus Dei gratia Rex Anglie & Francie & Dominus Hi-
 bernie Thes' & Baronibus suis de Scio' saltm' Cum nos tercio de-
 cimo die Februarii ultimo prer' to per literas nostras patentes per-

T

dona

donaverimus remiserimus & relaxavimus Johanni Attewylle de Exon' in Com' Devon' Clico' & Deputato Nichi' Heynescote nup' unus Collector' Custumar' & subsidior' nostror' in portub' Exon' & Dertmouth al' dicto Johanni Attewylle de Civitate Exon' alias dicto Magro' Johanni Attewylle de Exon' in Com' Devon' Clico' & Deputato Nichi' Heynescote nup' unius Collector' Custumar' & Subsid' nror' in portib' Exon' & Dertmouth alias dicto Magro' Johanni Attwyll seu quocumque alio noie' idem Johannes conseretur omnimod' demand' Transgressionibus offensas contemptus & impeticoes' per ipsum Johannem contra formam tam quorumcumque statutor' Ordinacion' & provision' preterita quor' aliqua secta versus eundem Johannem per Bill' vel per bre' de premunire fac, seu alio modo quocumque pro aliqua marria ante dat' presenciu' fact' fieri valeat quam quorumcumque alior' Statutor' fact' sive perpetrat' Et in super perdonavimus remiserimus & relaxavimus eidem Johanni Sectam pacis nostr' que ad nos versus ipsum Johannem pertinet pro omnibus prodicionibus Mordris Raptibus Mulier' rebellionibus insurrectionibus felonis conspirationibus Cambipartiis Manutenensis confederationibus riotis routis conventiculis illicitis & imbraciariis at aliis transgressionibus offensis negligenciis extorcionibus misprisionibus ignoranciis contemptibus concelament' forisfact' & deceptionibus ipsum Johem' ante dat' presenciu' similiter fact' aut perpetrat' ac etiam Utlagat' si que in ipsum Johannem hiis Occasionibus seu eor' aliqua sunt promulgat' & firmam pacem nostr' ei inde concesserimus Necnon perdonavimus remiserimus & relaxavimus eidem Johanni omnimod' Fines adjudicatos sive adjudicand' Amerciamenta extus forisfact' debita & compota per ipsum Johannem nob' ante dat' presenciu' qualitercumque debet' sive pertinen' ac omnimod' actiones executiones

executiones Sectas impeticoes querelas penas & demandas qua nos solus vel nos conjunctim cum aliis personis vel alia persona hemus seu here possemus verus ipsum Johannem pro aliquibus hujusmodi finibus amerciamentis Exitis debit & compotis nob ante dat presenciu qualiter cumque debit sive pertinen prout in literis nostris plenius continentur vob mandamus quod ipsum Johannem contra tenor literar nostrar predicatis non molestatis in aliquo modo T. me ipso apud Westm 15^o die Februarii anno regni nostri sexto decimo. Que omnia & singula idem Johes Attewylle paratus est verificare prout Cur &c. Unde non intendit quod dict Dominus Rex nec idem Johannes Taylor ipsum Johannem Attwyll in premies ult'ius impet seu occasionare velit Et petit Judicu Et quod ipse quoad premissa erga Dnm Regem & pefat Johannem Taylor exoneratur & ab hac Cur &c.

Ad quod dict Willus Hufce dic quod ipse non potest dedicere plitu pefat Johis Attewylle per ipsum versus präd Dominum Regem plitatu &c. Et präd Johes Tayllour in propria persona sua non cognoscendo aliqua per ipsum Johem Attewylle superius plitata fore vera dieit quod ipse ad plitum illud ipsius Johis Attewylle modo & forma supius plitatum necesse non habet per legem terræ respondere unde petit Judicium Et quod ipse de medietate forisfcure dict quadraginta librarum dco Johi Tayllour oneretur juxta formam & effem statuti prædicti &c. Et präd Johes Attewylle dic quod ex quo ipse sufficien materiam allegavit in barram Informacionis præd tam versus Dominum Regem quam dict Johem Tayllour quam quidem materiam idem Johes Attewyll parat est verifare prout Cur &c. Et petit Judicium &c. Et super hoc quia Cur vult delibare in premis ante quam ulterius &c. dat est dies tam præfat Johi Tayllour quam pefat Johi Attewylle

wylle eod' statu quo nunc usque 15 scæ Trin' ad quem diem dict' Johes' Tayllour ven' hic in propria persona sua Et præd' Johes' Attewylle per prefat' Attorn' suum & habent ulterius ex causa præd' usq; quindenam sci' Michis'. Ad quem diem dcus' Johes' Tayllour ven' hic in propria persona Et dcus' Johes' Attewylle per prefat' Attorn' suum & habent diem ulterius ex causa præd' usque quindenam sci' Hillarii. Ad quem diem præd' Johes' Tayllour ven' hic in propria persona. *Et dcus' Johes' Attewylle per præd' Attorn' suum* (a). Et præd' Johes' Tayllor petit Judicium in premissis &c. Super quo visis premissis per Barones hira'que indemnatura deliberacione inter eosdem. Consideratum est per prefatos Barones quod præd' Johes' Attewylle de viginti libris medietate quadraginta librarum præd' Domino Regi in hac parte forisfact' erga eundem Dominum Regem *exoneretur* pretextu literarum Domini Regis patencium & bris' prædicorum. Et ulterius quia videtur prefatis Baronibus placitum prædicti Johis' Attewylle in premissis plitatum' minus sufficiens fore in lege ad prefat' Johem' Tayllour excludend' pro parte sue forisfeure' præd' in hac parte juxta formam statuti præd' habenda. Ideo consideratum est per Barones quod idem Johes' Tayllour recuperet versus prefat' Johem' Attewylle viginti libras medietatem quadraginta librarum prædict' juxta formam statuti præd' forisfact' &c. Et precept' est Vic' dci' Com' Devon' quod de bonis & catallis terris & ten' præd' Johis' Attewylle in Balliva sua fierifac' viginti libras prædict' per dcum' Johem' Tayllour versus ipsum Johem' Attewylle ut premittitur recuperat' Ita quod denar' illos habeat hic &c. A die pasche in 15 dies prefat' Johi' Tayllour solvend'.

(a) It appears the Judgment given by the Barons, sitting the Parliament, was not by Default, but upon the Appearance of *Atwelle* by his Attorney.

(a) *Ante quem diem* scilt' 14^o die Februarii prædicto anno 17 Dominus Rex mandavit hic bre' suu' de Magno Sigillo suo Thes' & Baronibus hujus Scaccarii direct' cujus Tenor sequitur in hec verba Edwardus Dei gra' Rex Angl' & Franc' & Dominus Hiber' Thes' & Baronibus suis de Scaccario saltm'. Quia in recordo & processu accciam in reddicoe' Judicii loquele que nuper fuit coram vob' vos prefati Barones in Scaccario nostro prædicto sine bri' nostro inter nos & Johem' Tayllour juniorem de Civitate Exon' in Com' Devon' Marchaunt & quendam Magrm' Johem' Attewylle de Exon' in Com' præd' Clericum & Deputar' Nichi' Heynescote nuper unius Collectorum Customarum & Subsidiarum nostrorum in Portubus Exon' & Dertmouth super quadam informacione versus ipsum Johem' Attewylle per præd' Johem' Tayllour qui tam pro nob' quem pro seipso sequebatur in ea parte coram vob' vos prefati Barones sca' de eo quod idem Johes' Attewille decimo octavo die Septembris anno Regni nostri quintodecimo prefato Nicho' Heynescote tunc Collectore ibm' in portubus prædictis apud Exon' in Com' Devon' emissit de Johe' Flore Mercatore de Britan' causa Merchandizand' septem pecias de Crest Cloth pro novem libris sex solidis & octo denariis contra formam statuti in parlamento Henr' nuper defco' & non de jure Regis Angl' sexti anno Regni sui vicesimo apud Westm' tento editis error intervenit manifestus ad gve' dampnu' ipsius Johis' Attewille sicut ex querela sua accepimus ac in statuto apud Westm' nuper edito inter cetera concordatum fuit & statutum quod in omnibus casibus nos aut alias personas tangentibus ubi quis queritur de errore fec' in Scaccario Cancellarius & Thes' venire fac' in aliquam cameram consilii juxta Scaccarium Recordum & processum hujusmodi extra dcm' Scaccarium & assumptis sibi Justic' & aliis

(a) This Writ of Error was not proceeded upon, and appears to have been brought purely for Delay.

U

peritis

peritis talibus quales sibi videbitur fore assumend' & vocatis coram
 eis Baronibus de Scaccario prædicto ad audiend' Informaciones
 suas & causas Judiciorum suorum nec non hujusmodi debite fac
 examinari & si aliquis Error inventus fuit illum corrig' fac' &
 rotlos emendari & postea eos in Scaccar' præd' remittere ad exe-
 cucionem faciend' prout in eodem statuto plenius continetur
 Nos igitur volentes errorem illum si quis fuit juxta formam
 statuti prædicti corrigi & partibus prædictis celem' justiciam fieri
 in hac parte vob' Mandamus quod si Judicium inde redditum sit
 tunc recordum & processum prædict' cum omnibus ea tangentib'
 coram Cancellario nostro & vob' vos prefat' Thes' in Cameram
 juxta Scaccarium le Councell Chambre vocatam in quindenā
 pasche prox' futur' venire fac' ut idem Cancellarius & vos prefat'
 Thes' Visis & examinatis recordo & processu prædictis auditisque
 informacionibus vestris vos prefati Barones ulterius in hac parte de
 Consilio Justic' & aliorum peritorum hujusmodi fieri fac' quod de
 jure & secundm' formam ejusdem statuti fuit faciend' T. meipso
 apud Westm' 13 die Februarii anno Regni nostri decimo septimo.

Posteaque deus' Dominus Rex mandavit hic bre' suu' de Magno
 Sigillo suo dilco' & fideli suo Thom' Veswyk Capital' Baron' hujus
 Scaccarii direct' in hæc verba. — Edrus' Dei gra' Rex Angl' &
 Franc' & Dominus Hiber' fideli suo Thome Urswyk Capital' Baron'
 de Scaccario suo saltm' Tenorem cujusdam petitionis nob' in pre-
 senti parlamento nostro per Coitates' regni nostri Angl' in eodem
 parlamento existen' ex parte Johis' Attewyll unius Civm' Civitatis
 Exon' in presen' Parliam' nostro de mandato nostro existen' exhibit'
 ac tenorem cujusdam responsionis eidem peticio' per nos de avisa-
 mento & assensu Dominorum spiritualium & temporalium in dio'
 parliameh' filit' existen' & ad requisicionem Coitatis præd' nec non
 auctoritate

auctoritate ejusdem parliamenti fact' & indors' dei tenoris dictæ
 petitionis insert' vob' mittimus presentibus interclusos mandantes ut
 inspectis tenoribus prædictis ulterius inde ad prosecutionem ipsius
 Johis' fieri fac' quod de jure ac secundum vim formam & effem'
 petitionis responsionis & auctoritatis præd' sint' faciend' T. meipso
 apud Westm' 21 die Februarii anno regni nostri decimo septimo
 et tenor petitionis præd' de quo superius in bri' fit mentio
 sequitur in hæc verba sc. To the Kyng our Sovereigne Lord sc.
 Prayen the Commons in this present Parliament assembled that
 where of tyme that mannes mynde is not the contrarie hit hath
 ben used that the Knyghtes of the Shires Citezeins of Citees
 Burges of Borowghes and Barons of 5 portes of this youre Reame
 called to eny of the Parlements of youre noble Progenitours or
 yours amonges other Libertees and Franchises have had and used
 Privilege that eny of them should not be empleaded in eny accion
 personall nor be attached by their persone or goodes in their
 comyng to eny such Parlement ther abidyng nor fro thens to
 ther propre home resortyng which libertees and franchises youre
 Highnes to your lieges called by youre auctorite Roiall to this
 youre High Court of Parlement for the Shires Citees Borowghs
 and 5 Portes of this Reame by your auctorite Roiall atte com-
 mensment of this Parlement graciously have ratified and confirmed
 to us your said Commens nowe assembled by youre seid Roiall
 commandement in this youre present Parlement And it is so
 Sovereigne Lord that oon John Attwyll one of the Citezens of
 the Cite of Exeter comen to this present Parlement and here con-
 tynuelly attendyng upon the same sithen the comencement
 therof one John Taillour callyng hym Marchaunt of the seid
 Citee of Exetur by vertue of 8 dyvers feyned Informations made
 in

in your Eschequer hath condempned the said John Atwyll during this present Parlement be the default of answere of the said John in 20 l. the same John dayly attendyng upon the same Parlement and not havynge knowleche of the saide Condempnacions Upon which Condempnacions divers and severall Writtes ben directed to dyverse Shirrefs of this youre Reame some of Fieri facias and some of Capias ad satisfaciend' so that the said John Atwyll may not have his free departyng from this present Parlement to his home for doubt that both his body hys Horfes and his other goodes and catells necessar to be had wyth hym should be put in execucion in that behalf contrarie to the Privilege due and accustomed to all the Members usuelly cald to the foresaid Parlement Be hit therefore ordeyned by the Advice and Assent of the Lords spiriuel and temporel in this present Parlement assembled and by the Auctorite of the same that the said Writtes of Execucion and every of them to be had upon the same in no wise to be executor nor hurtfull to the said John Atwyll his Heires nor Executours nor eny of them And that the Chief Baron of the said Eschequer for the tyme beyng have poiar be this Ordinance to grunt withoute denyer to the saide John Atwyll his heires and executours and every of them such and als many Writtes of Superfedias upon this Ordinance to every such Shiref or Shirefs of this Reame to be direct to furcise of eny maner of execution in that behalf to be made or had as to the seid John Atwyll his Heires and Executours and every of them shall be requisite Savyng alwey to the forseid John Taillour his forseid Jugements and Execucions and every of them to be had and fured at his pleasur ayenst the seid John Atwyll at eny tyme *after the ende of this present Parlement* this Ordinance notwithstanding.

Super quo virtute & auctoritate actus præd' preceptum est Vic'
 dci' Com' Devon' quod execucioni brium' prædictorum versus
 prefatum Johannem Attewyll ad sectam dci' Johis' Taillour in hac
 parte directorum supersedeat quousque inde aliud habuerit de Rege
 in Mandatis Et si forte aliquid de bon' seu Catall' terris seu tentis'
 præd' Johis' Attewyll virtute brium' prædictorum aut alicujus
 eorundem levaverit id sine dilone' restituat eidem &c. Et super
 hoc quia Cur' vult deliberare' antequam &c. dat' est dies hic tam
 pefat' Johi' Taillour quam pefat' Johi' Attewyll usque 15 pasche
 præd' Ad quem diem præd' Johes' Taillour ven' in propria per-
 sona sua Et præd' Johes' Attewylle per dict' Attorn' suum Et Vic'
 quoad dict' bre' de fieri fac' retorn' bre' ill' indorsatu' sic Execucio
 istius bris' par' in quadam Cedula hujus bri' consut' Ego Johes'
 Sapecote virtute cujusdem bris' Domini Regis de fierifac' mihi
 direct' & huic Cedul' consut' Baronibus in dco' bri' content' Certi-
 fico quod feci quoddam preceptum meum Sigillo Officii mei
 signat' quibusdam Johis' Lewys Rico' Taillour & Roberto Adelard
 direct' and fierifac' de bonis & catallis terris & ten' Magistri
 Johis' Attewylle in dco' bri' noiat' ad valenc' 20 l. quas Johes'
 Taillour jun' in eodem bri' specificat' recuperavit versus dcm'
 Johem Attewille prout in eodem bri' fit mencio' Virtute
 quorum bris' & precept' Johes' Lewys Ricus' Taillour & Robertus
 Adelard die Jovis acciden' 26^o die Februarii anno Regni Regis
 Edwardi Quarti decimo septimo apud Topsham in Com' præd'
 ceperunt unam Navem voc' a Carbelle cum toto apparatu ad va-
 lenciam viginti librarum de bonis & catallis dci' Johis' Attewylle
 & ill' vendicoi' expone' voluissent Et postea super hoc prædictus
 Johes' Attewyll die Lunæ acciden' sc'do die Mrcii eodem
 anno deliberavit mihi Bris' Dni' Regis de supers' cuid' alio bri' de

fierifac' versus eundem Johem' Attewyll ad hunc diem per me
 retnat' consut' Et incontinen' post recepcionem ejusdem bris' de
 supers' prædictus Johes' Attewylle ac Phus' Attewylle nuper de
 Exon' in Comitatu prædicto Merchaunt Ricus' Clyff nuper de
 Exon' in Com' præd' Baker Johes' Naon nuper de Exon in Com'
 præd' Hofyer Ricus' Undey nuper de Exon' in Com' præd' Mer-
 chaunt & Raymundus Russell nuper de Topsham in Com' præd'
 Laborer eodem die Lunæ apud Topsham præd' in Comitatu præd'
 Vi' & Armis videlt' Gladiis Baculis Arcubus et Sagitiis in præd'
 Johem' Lewys Ricum' Tayllour & Robertum Adelard insultum
 fecer' & præd' Navem voc' a Carvell' cum toto apparatu præd' a
 possession' ipsorum Johis' Lewys Rici' Tayllour & Roberti Ade-
 lard tunc & ibidem ceperunt & resurserunt in contemptu Domini
 Regis & contra pacem suam ideo Execucionem dei' bris' de fierifac'
 facere non possum Et super hoc præd' Magister Johes' Attewylle
 de premissis per Barones allocutus si quid pro se habeat vel discere
 sciat quare ipse finem cum Domino Rege pro contempt' præd'
 facere non deb' Dic' quod materia in retno' præd' Vic' content'
 minus sufficiens est in lege ad ipsum Johem' ad eandem respondere
 compelland' Undepetit Judicium Et quod ipse proinde ab hac Cur'
 dimittatur &c. Postea scilicet primo die Maii anno dei' Domini
 Regis nunc decimo octavo ven' hic in Cur' prefat' Johes' Tayllour
 in propria persona sua present' tunc ibidem Johe' Rossen' Epo'
 Custod' privati Sigilli dei' Domini Regis Et præd' viginti libras
 medietat' quadraginta librarum prædict' quas idem Johes Tayllour
 versus prefat' Johem' Attwyll hic in Curia recuperavit Et omne id
 quod ad ipsum Johem Tayllour occasione premissorum pertinuit
 eidem Johi Atwyll remisit & relaxavit Ideo Consideratu' est per
 Barones quod idem Johes' Atwyll de eisdem Viginti Libris eat ad
 presen' sine die &c.

Adhuc

*Adhuc Placita coram Baronibus de Scaccario apud Westm' N^o II.
de Termino Sancti Michaelis Anno Regni Regis Edwardi
post Conquestam Decimo Septimo. Rot. 12.*

Memorandum quod Johes Ector de Civit' Exon' in Com' Devon.
præd' Deputat' Rici' More Appriator' subs' ulnagii pannor'
venaliu' in Com' Devon & Cornub' ven' coram Baronibus hujus
Scaccarii vicesimo sexto die Novemb' hoc termio' in propria per-
sona sua Et pro Domino Rege dedit Cur hic intelligi quod ipse
sexto die Augusti ultimo predicto apud Civitatem Exon' predict'
videlt' in quadam strata ibm' vulgarit nuncupat' the Hye Strete
seisivit & ad opus Domini Regis Arrestavit quatuordecim pec' panni
Lanei vocat' strey quarum tresdecim coloris albi & altera residui
earddum' peciar' panni coloris viridis de bonis & Catallis cujus-
dam Johannis Piers Mercatoris de Britan' pro eo quod pecie panni
predict' adtunc & ibm' per quendam Johannem Attewylle de
Civitate predicta Mercatorem vendicoi' exposit' fuerunt prefato
Johanni Piers sigillo pro Subs' & uinag' pannor' venal'm in Civi-
tate prædicta ordinat' minime consignat' Et sup' hoc eodem sexto
die Augusti prædictus Johannes Attewylle apud Civitatem Exon'
prædict' ven' Vi & Armis videlt' gladiis & Daggar' & in prædict'
Johannem Ector adtunc & ibm' insultum fecit & quatuor pecia'
pani quatuordecim pec' panni Lanei prædict' adtunc & ibm'
extra poss' dicti Domini Regis & præfati Johannis Ector manu forti
cepit & asportavit contra pacem Domini Regis ac in contemptum
eiusdem Domini Regis unde prædictus Johannes Ector petit avisa-
mentum Cur' in præmissis Et quod ipse medietatem prædicar'
decem peciar' panni per ipsum ut præd' est ad opus dicti Domini
Regis seisit' litere valeat juxta formam Statuti in tli' casu edit' &
provis' Super quo sca' proclamatioe' pro Dno' Rege prout moris est
siquis

siquis Cur' his informare vellet quare pecie panni prædict' dicto
 Domino Regi ex causa prædicta tanqm' forisfact' pertinen' re-
 manere non deb' veniret & audiret & nullus ad hoc faciend'
 compuit' Ideo Concordatum est quod Mander' præfat' Johanni
 Ectór ac Roberto Duplache de London' Draper & Johanni Gybbes
 de eadem Taylour ad dcas' decem pecias panni percell' prædcar'
 quatuordecim peciar' panni per Sacrm' prob' & leg' hom' dce'
 Civitatis fidelit' & particlarit' app'ciari' & juste valuari Indentur'
 inter ipsos & app'ciatores eadem' poni & quantitatem inde debite
 conficiend' Ita quod altam' partem Indentuar' prædict' habeant
 hic &c. Et præ' eis in forma prædca' Ita &c. in Octob' Sci' Hil-
 larii. Concordatu' est eciam quod præfat' Johannes Attewylle
attachietur per Corpus suum ubicumque &c. ad respondend'
 Domino Regi *tam de Contemptu prædco' quam de prædict'*
quatuor peciis panni per ipm' ut supdem' est ext' possessionem
 Domini Regis capt' sive de pretio seu valore eadem' Et ad ultius'
 recipiend' in premisses quod Cur' &c. Et præ' est Vic' dicti Com'
 Devon' quod prædm' Johannem Attewylle attachiet in forma
 prædca' Ita &c. *a die Sci' Hillarii in 15 dies* Ad quem diem
 Vic' quoad præfat' Johannem Attewylle retorn' bre' & Mandavit
 quod idem Johannes non fuit inventus &c. Sicut continetur in
 Indorsemento ejusdem bris' quod est in ligo' brium' de hoc Anno
 in Devon' *Tamen præfat' Johannes Attewylle ad eandem idem*
ven' in propria persona sua Et pro præmissis comittitur prisone de
Flete ibm' moratur quousque &c. Et super hoc incontinenti idem
 Johannes Attewylle pro præmissis ex gra' Cur' *fecit finem cum*
dicto Domino Rege Sicut continetur alibi in hiis Memorand'
 videlt' inter Fines de termio Sci' Hillarii cujus finis prætextu Con-
 sideratum est per Barones quod versus eundem Johannem Atte-
 wylle in præmissis non fiat hic ulterius Executio.

Extracts from the Trials of the Seven Bishops, STATE TRIALS, N° III.
Vol. IV. Page 302, &c.

Sir Robert Sawyer. (Page 302.) “ My Lord, Mr. Solicitor has
“ opposed our being heard, but we now desire he would hear
“ our Answer to it, and that which we have to say is this:
“ That my Lords the Bishops are not here regularly in the Court
“ to be charged with an Information; and if the Law be not
“ with us in this Point, as we doubt not to make appear it is,
“ no question but when your Lordship has heard what we have
“ to say, you will give a right Rule in it. My Lord, we say,
“ that by the Rules of Law, no Man ought to be charged with
“ an Information or Indictment by the expresse Statute of *Edward*
“ the Third, unless he come into the Court by legal Process:
“ That is a standing Rule, and the Practice of this and all other
“ Courts is pursuant to it. Now in this Court you have several
“ Processes that go out of this Court, and he that comes as taken
“ by virtue of a *Capias*, or an Attachment after a Summons, or
“ by *Venire* in the Nature of a *Subpœna*; I say, he that comes
“ in upon these Processes, may be charged with an Information;
“ but where a Person is in Prison, committed by another Juris-
“ diction, and another Authority, than that of this Court, when
“ the Prisoner is brought here by *Habeas Corpus*, the first Thing
“ the Court has to do is, to enquire whether he be legally com-
“ mitted, to that End the Return is filed, and the Party has
“ leave to make his Exceptions to it, as we do in this Case.

“ My Lords are brought here upon a *Habeas Corpus*, the Re-
“ torn of which has been read, and now the Return is filled,
“ we are proper to move that my Lords may be discharged; for

Y

“ you

“ you now see what they are committed for; it is for a Mifde-
 “ meanor, in making and publishing a Libel, that is the Matter
 “ for which they are committed: And it appears by the Retorn
 “ likewise, that they who are thus committed are Peers of the
 “ Realm, for so my Lords the Bishops all are, and for a Mifde-
 “ meanor they ought not by Law to have been committed.

L. C. J. “ You go too far now, Sir *Robert Sawyer*; I would
 “ willingly hear you whatsoever you have to say; but then it
 “ must be in its due Time.

Mr. Finch. (Page 303.) “ Then, my Lord, with humble Sub-
 “ mission, we say, that it doth appear by this Retorn, that my
 “ Lords the Bishops are not here legally in Court, because this
 “ Commitment of theirs was not a legal Commitment; and
 “ Two Objections we have to it; the one is, that the Persons
 “ committing had no Authority to commit; for the Retorn says,
 “ that it was by virtue of a Warrant under the Hands of such and
 “ such, being Lords of the Council, and they (we say) have no
 “ Authority to do this. The other Objection is, that the Fact
 “ for which they were committed, they ought not to have been
 “ imprisoned for. The Fact charged upon them is in the Na-
 “ ture of a bare Misdemeanor, and for such a Fact it is the Right
 “ of my Lords the Bishops (as Peers of the Realm) that they
 “ ought to be served with the usual Process of *Subpæna*, and not
 “ to be committed to Prison.

Mr. Att. Gen. [p. 308.] “ — I do say, if a Man comes in
 “ voluntarily upon any Recognizance, though it be not in
 “ Custody; or if he comes in upon any Process, if the Court
 find

“ find him here, though that Process be not for the thing charged
 “ in the Information, yet the Court is so much in Possession of
 “ the Person, that he shall plead to any Information; and that
 “ I do say, and will stand by.

Mr. Sol. Gen. “ My Lord, we are here in a very great Auditory,
 “ and this Court is always a very great Court (but here is a greater
 “ and nobler Assembly than usually we have here) and these
 “ Gentlemen, to shew their Eloquence and Oratory, would, by
 “ converting Propositions otherwise than they are delivered, put
 “ another Meaning upon them, and so draw strange Inferences
 “ from them; but these Arts, we are sure, will not prevail here.
 “ We say plainly, and we are sure the Law is so (let them ap-
 “ prehend what they will) that your Lordship cannot exhibit an
 “ Information to any Man that you find accidentally here in the
 “ Court.

“ Then, says *Mr. Finch*, we are agreed; but withal (say I)
 “ take my other Proposition: If a Person be brought into Court
 “ by legal Process, or upon any Contempt whatsoever, by an
 “ Attachment or Warrant, or upon a *Habeas Corpus* after a
 “ Commitment, being thus found in Court, your Lordship may
 “ certainly charge him with an Information. When these Gen-
 “ tlemen, who are so eager on the other Side, did preside here,
 “ and stood in the Places where Mr. Attorney and I now are, I
 “ can name them abundance of Cases of the like Nature with
 “ this, when Men have been compelled to appear to Informations,
 “ and plead presently. They are the Persons that made the Prece-
 “ dents; they made the Law for aught I know: I am sure I find
 “ the

“ the Court in Possession of this as Law, and we pray the usual
“ Course may be followed.

Mr. Finch. “ Pray, my Lord, spare us a Word in this Matter.
“ I do agree with Mr. Attorney in this Matter; but I do not
“ agree with Mr. Solicitor.

Mr. Sol. Gen. “ You do not agree with yourself.

Mr. Finch. “ I hope I do, and always shall agree with myself;
“ but I do not agree with you, Mr. Solicitor.

Mr. Sol. Gen. “ You do not in 1688 agree with what you were
“ in 1680.

“ *Mr. Finch.* Says *Mr. Attorney*, a Man that comes voluntarily
“ in, cannot be charged with an Information; with him I agree:
“ says *Mr. Solicitor*, A Man that comes in, and is found in
“ Court by any Process, may be charged with an Information;
“ I say no, if the Process be wholly illegal; for he cannot be said
“ to be legally in Court. Suppose a Peer of the Realm be taken
“ upon a *Capias*, and is committed to the *Marshalsea*, and is
“ brought upon a *Habeas Corpus*, I would fain know, whether
“ you could declare against him?

Mr. Att. Gen. “ No, we cannot.

Mr. Finch. “ And why is that, but because the Process is il-
“ legal, and he is not truly in Court? Then is it a proper Time
“ now to make this a Question, whether my Lords here were
“ legally committed, before you can lay any thing to their Charge
“ by way of Information? For if the Commitment be illegal,
“ it

“ it is a void Commitment : And if the Commitment be void
 “ the Process is void, and then my Lords are not legally in
 “ Court.

L. C. J. “ That sure is but returning again to the same Question that has been determined already.

Mr. Sol. Gen. “ If your Lordship will permit them to go over
 “ and over the same Things, we shall never have an End.

Mr. Finch. “ My Lord, we pray these Gentlemen of the
 “ King’s Counsel may be a little cool with us, and then they will
 “ find we do not talk the same Things over and over again, nor
 “ meddle with that which the Court have given their Judgment
 “ in.

L. C. J. “ Well, go on, Sir.

Mr. Finch. “ My Lord, we say it is the Privilege of the Peers of
 “ *England*, that none of them shall be committed to Prison for
 “ a Misdemeanor, especially in the first Instance, and before Judgment. This (we say) is the Right of my Lords the Bishops, and
 “ that which they claim as Lords of Parliament. Now it appears
 “ upon this Return and the Warrant, that the Council-Table hath
 “ committed them (for your Lordship and the Court hath rul’d it,
 “ that this Commitment must be taken to be by Order of the
 “ Privy-Council, and we meddle not with that further); but we
 “ say that the Council-Table may commit a Man unjustly, that is
 “ certain. There has been Relief often given in this Court against
 “ Commitments by the Council-Table : And that they were unjustly committed, depends upon the Point of their Privilege as
 “ Peers.

Z

Mr.

Mr. S. Pemberton. “ My Lord, we say, that the Lords of the
 “ Council have illegally committed these Noble Persons, who are
 “ Peers of the Realm, and ought to have the Privilege of their
 “ Peerage, which is, *not to be committed for a Misdemeanor* ;
 “ that the Council ought not to have done : For the Peers of *Eng-*
 “ *land* ought no more to be committed for a Misdemeanor, and to
 “ be imprisoned, especially upon the first Process, than they may
 “ be in a Case of Debt. It is true, in the Case of Treason, Felony,
 “ *or the Breach of the Peace*, the Peers have not such a Privilege ;
 “ they may be committed : But for a Misdemeanor (as this does
 “ appear to be in the Warrant of Commitment) they ought not
 “ to be committed : But they were committed by the Lords of the
 “ Council ; and we now complain of this to your Lordship as il-
 “ legal, and therefore pray my Lords may be discharged.

Sir Rob. Sawyer. “ Will your Lordship be pleased to favour
 “ me a Word on the same side, for my Lords the Bishops. It
 “ must be agreed to me, that if a Peer be brought into Court, as
 “ taken by a *Capias*, he cannot be charged with a Declaration ;
 “ and the Reason is, because the Process is illegal. Then, my
 “ Lord, with Submission, when a Peer comes upon a foreign
 “ Commitment, and is brought in Custody upon a *Habeas*
 “ *Corpus*, this is either in the Nature of a Process, or a final Com-
 “ mitment, as a Judgment ; they will not say that this is a good
 “ Commitment, so as to amount to a Judgment ; for the Coun-
 “ cil-Board could not give a Judgment in the Case ; besides, the
 “ Commitment is illegal, because it is not a Commitment till they
 “ find Security to answer an Information here, but 'tis a War-
 “ rant to keep them for a Misdemeanor : Besides, there is another
 “ thing

“ thing we have to say to this Warrant (for I am making Ob-
 “ jections against the Validity of this Commitment) it does not
 “ appear that there was any Oath made, and therefore the Court
 “ must adjudge that there was no Oath made, and then no Man
 “ ought without Oath to be committed, much less a Peer. But
 “ that which we chiefly rely upon is, That my Lords ought not
 “ to have been committed for this, which is but a Misdemeanor
 “ at most : And if they use it, as Process, to bring my Lords the
 “ Bishops to answer an Information, we say, by Law no such
 “ Process can be taken out against the Persons of Peers for bare
 “ Misdemeanors. I do agree, that for Felony, Treason, *or*
 “ *Surety of the Peace*, the Persons of Peers may be committed ;
 “ and that which is called Surety of the Peace in our Books,
 “ Mr. Solicitor knows very well, in some of the Rolls of Par-
 “ liament, is called *Breach of the Peace*, but it is all one ; and
 “ the Meaning, in short, is, that it is such a Breach of the Peace,
 “ as for which a Man by Law may be obliged to find Sureties for
 “ the Peace. If it should mean a Breach of the Peace by Im-
 “ plication, as all Trespasses and Misdemeanors are said to be
 “ *contra Pacem* in the Indictment or Information, then it were
 “ a simple thing to enumerate the Cases wherein Privilege did
 “ not lie ; for there could be no Information whatsoever, but
 “ must be *contra Pacem*, and so there could be no such
 “ thing as Privilege at all. And besides, we say, the very
 “ Course of this Court is contrary to what they would have ; for
 “ in the Case of a Peer, for a Misdemeanor, you go first by Sum-
 “ mons, and then you do not take out a *Capias* as against a com-
 “ mon Person, but the next Process is a *Distringas*, and so *ad*
 “ *infinitem*. And I do appeal to them on the other Side, and
 “ challenge

“ challenge them to shew any one Precedent, when a Peer was
 “ brought thus in Court, to be charged with an Information,
 “ without it were in the Case of an apparent Breach of the
 “ Peace; for he must be charged into Custody, and there must
 “ be a *Committitur* to the Marshal, to intitle the Court to pro-
 “ ceed. Your Lordship will find but very few Precedents of
 “ Cases of this Nature about common Persons; for till within
 “ this Fourteen or Fifteen Years there was no such thing ever
 “ done against a common Person: But this was the Rule; First
 “ there went out a *Subpœna*, and then an Attachment, and when
 “ the Party was taken upon the Attachment, he is taken to
 “ come in upon Process, and then the Court would charge him
 “ presently; but if he did appear upon the Summons, they would
 “ not charge him, but he had Time to take a Copy of the Infor-
 “ mation, and an Impar lance of course, till the next Term, be-
 “ fore he could be compelled to plead. But in the Case of a
 “ Peer, there never was any such Precedent as the Attaching his
 “ Person, but only a Summons and Distress: And I would be
 “ glad the King’s Counsel would shew, that ever there was any
 “ such Process taken out against the Person of a Peer for a mere
 “ Misdemeanor. My Lord, ’tis plain, what Breach of the Peace
 “ means in every Information; and I only speak this to acquaint
 “ the Court how the constant Proceedings in all these Cases
 “ have been. These Informations were antiently more frequent
 “ in the *Star-Chamber*; and what was the Process there? Not
 “ the common Process of a *Subpœna*; that was not the Case
 “ there; but the Process was a Letter from the Chancellor; that
 “ if the Party upon the Letter did not appear, in a common
 “ Case, there went out an Attachment; but in a Peer’s Case
 “ never:

“ never : And so it appears by *Crompton's Jurisdiction of*
 “ *Courts, Tit. Star-Chamber* 33. This appears likewise by the
 “ Proceedings in Chancery against the Peers, till the Queen's
 “ Time. They did not so much as take out an Attachment af-
 “ ter Default upon a *Subpœna*, but they would then, in the
 “ Queen's Time, be so bold as to take out an Attachment against
 “ a Lord for not appearing ; but that Course was condemned as
 “ illegal ; so we find in my Lord *Dyer*.

Mr. Att. Gen. “ That was at a common Person's Suit.

Sir Rob. Sawyer. “ But the Proceedings in the *Star Chamber*
 “ were at the King's Suit, and I am sure Mr. Solicitor knows
 “ that the Peers Privileges reach to Informations ; but, as I was
 “ saying, it was so adjudged as to the Chancery in my Lord
 “ *Cromwell's Case, 14 Eliz. Dyer, 315.*

L. C. J. “ You take a great Compass, Sir *Robert Sawyer* ;
 “ but pray remember what you laid down at first, for the Ground
 “ of your Discourse, That there was never any Commitment of
 “ a Peer for a bare Misdemeanor: You must keep to that ; that
 “ is the Point you are to look after.

Sir Robert Sawyer. “ My Lord, I will so ; I do not cite these
 “ Cases but for this Purpose, to shew, that in all Courts the Peers
 “ have particular Privileges ; and I am sure they can produce you
 “ no Precedents for any such Proceedings against a Peer. In my
 “ Experience of these Matters, I never knew any such ; nay, I
 “ knew it always to be otherwise, that in Informations for Mis-
 “ demeanours, there did never issue out a *Capias* against a Peer :
 “ And Mr. Attorney knows very well, it was so in the late Case

A a

“ of

“ of my Lord *Lovelace*; for that Case of my Lord *Devonshire*,
 “ that was an exprefs Breach of the Peace, though it was de-
 “ bated and disputed then; so that I take it, these Noble Lords
 “ cannot be charged with this Information, because they do not
 “ come in by legal Procefs; and unless they can shew me any Cases,
 “ where a Peer did ever come in upon such a Commitment, and
 “ answered to an Information upon that Commitment, it must
 “ certainly be allowed not to be the legal Course; though if
 “ such a Precedent could be shewn, that passed *sub Silentio*, with-
 “ out Debate or solemn Determination, that would not do, nor
 “ could bind the rest of the Peers. If one Man would lose a
 “ particular Benefit he has, all the whole Body must not lose it;
 “ and the Benefit is not small, of Time to make his Defence; of
 “ Imparling, of taking a Copy of the Indictment, and preparing
 “ himself to plead as his Case will bear; and indeed a common
 “ Person has used to have these Privileges, though in some Cases
 “ of late they have taken the other Course; and if a *Capias* went
 “ out (which we say cannot go against a Lord) and the Party were
 “ brought in, he was to answer immediately. Now, my Lord,
 “ I take it, that the Privilege of Peers is in all Times the same
 “ with the Parliamentary Privilege *in Parliament-Time*, which
 “ reacheth to Informations, as well as other Actions. My Lord
 “ *Coke* is exprefs in this Point, in the 4 *Instit.* 25. If that Ob-
 “ jection should hold good, that every Information being *contra*
 “ *Pacem*, that should be a Breach of the Peace, then (as I said
 “ before) Privilege will hold in no Information, which is con-
 “ trary to that and all our other Books: 'Tis only such a Breach
 “ of the Peace, as for which Security of the Peace may be re-
 “ quired. But further, that this is the Privilege enjoyed by the
 “ Peers,

" Peers, Spiritual as well as Temporal, I suppose will not be
 " denied; for I think they will not question, but that the Bishops
 " and Abbots that were Lords of Parliament were Peers; and
 " we find in our Books, when the Court has been moved for a
 " *Capias* against an Abbot, if he were a Mitred Abbot, and sat
 " in the Lords House, it was always said, that no such Process
 " ought to go; and so it is in the Case of Bishops: But indeed
 " for other Noblemen, the Difference is this: Where it does not
 " appear upon Record, that they are Lords in Parliament, there
 " the Courts have put them to bring their Writs of Privilege;
 " but where it does appear upon Record that they are Peers, the
 " Court is to allow and take Notice of their Privilege; and there
 " needs no such Writ. Now that the Parliament Privilege, and
 " the Privilege of Peers (as to their Persons) is the same, appears
 " by the Form of the Writ in the *Register, Fol. 287. Fitz Herb.*
 " *Nat. Brev. 247.* The Words of the Writ are these, That if
 " such a one be sued at the Suit of another, the Writ commands,
 " that a Peer out of Parliament-Time should have the same Pri-
 " vilege with those summoned by the King to the Parliament;
 " and I know not any Difference that can be put between them;
 " and it cannot be denied, that all Informations whatsoever, un-
 " less such as are for Breaches of the Peace, for which Surety of
 " the Peace may be required, are under the Controul of the Par-
 " liament Privilege: So that upon these Grounds, I do press that
 " my Lords the Bishops may be discharged. If there be any In-
 " formation against us, we are ready to enter our Appearance,
 " to answer it according to the Course of the Court: But if the
 " Information be for no other thing than what is contained in
 " the Warrant of Commitment, then their Persons ought to be
 " privileged from Commitment.

Mr.

Mr. Pollexfen. " If your Lordship please to take it altogether,
" you will find it a Case very well worth your Consideration, it
" being the Case of all the Peerage of *England*.

Mr. Att. Gen. " My Lord, these Gentlemen have taken a
" great deal of Liberty, and spent much of your Time in mak-
" ing long Arguments; and after all, truly, I do not know
" where to have them, nor can understand what they would be
" at. It seems they agree, that for Treason, Felony, and the
" Breach of the Peace, a Peer may be committed.

L. C. J. " That is, say they, such a Breach of the Peace, as
" for which Surety of the Peace may be required.

Mr. Att. Gen. " Then all the Learning they have been pleased
" to favour us with is at an End; for if here be any thing charged
" upon the Bishops, for which Sureties of the Peace may be re-
" quired, then this is a good Commitment.

L. C. J. That they must agree upon their own Arguments.

Mr. Att. Gen. " Can then any Man in the World say, that a
" Libel does not require Sureties of the Peace? For we must now
" take it as it is here upon this Return. How my Lords the
" Bishops will clear themselves of it, is a Question for another
" Time; but the Warrant says, they were committed for con-
" triving, framing, and publishing a seditious Libel against his
" Majesty and his Government. Is there a greater Misdemeanor?
" Or is there any thing on this Side a capital Crime that is a
" greater Offence? Is there any thing that does so tread upon
" the Heels of a capital Offence, and comes so near the greatest
" of

“ of Crimes that can be committed against the Government? Not
 “ to enlarge at this Time upon what the Consequences of such
 “ Things may be; is there a greater Breach of the Peace than
 “ such seditious Practices? No Doubt, any Man may be com-
 “ mitted for it, and may be bound to find Sureties for his good
 “ Behaviour.

Sir Rob. Sawyer. “ I say Sureties of the Peace, not of the
 “ good Behaviour.

Mr. Sol. Gen. “ Pray, my Lord, would you consider where
 “ we are? We are going towards *France*, I think, or some far-
 “ ther Country: They have set us out to Sea, and I do not see
 “ after this Rate when we shall come to Land. Certainly these
 “ Gentlemen are mightily out of the Way, and would fain have
 “ us so too! We are here upon a single Question, as this Case
 “ stands before your Lordship, upon the Return. Here is a Libel,
 “ a seditious Libel, said to be contrived, made, and published
 “ against the King and his Government by these noble Lords the
 “ Prisoners. This is the Accusation; suppose this be true, that
 “ is to be proved hereafter: I hope they are innocent, and will
 “ prove themselves so; but suppose it to be true, that they have
 “ made a seditious Libel against the King and his Government,
 “ will any Man say, that this is not done *Vi & Armis*? This is
 “ a Libel with a Witness; nay, Two or three Degrees more will
 “ carry it to High Treason; and all the Informations that were
 “ exhibited by *Sir Robert Sawyer*, when he was Attorney Gene-
 “ neral (and he exhibited a great many for Libels) constantly these
 “ Words were in, *Vi & Armis & contra Pacem*.

Bp. of Peterborough. " Was it so in your own Case, Mr. Solicitor ?

Mr. Sol. Gen. " Yes, it was so in my Case, and you were one
 " of them that prosecuted me, for aught I know ; or if you did
 " not prosecute me, you preached against me ; or if you did not,
 " some of your Tribe did. But so, my Lord, it was in many other
 " Cases within Time of Memory. Sir *Robert Sawyer* has passed a
 " Compliment upon me, of my great Skill in Parliament Matters ;
 " but truly there needs no great Skill in Matters where the Law is
 " so plain. A Peer they agree may be in Prison for Treason,
 " Felony, or Breach of the Peace ; but that Breach of the Peace,
 " say they, is where the Law requires Sureties of the Peace : But
 " is there any Certainty where Sureties of the Peace shall be re-
 " quired, and where not ? Then I would put this Case ; these
 " Lords have contrived and published a seditious Libel against the
 " King and his Government, and whether this be not such a Breach
 " of the Peace as will require Sureties of the Peace, is the Que-
 " stion before you : And it plainly appears to be so, in Sir *Baptist*
 " *Hicks's Case* in *Hobbart*. If a Man write a private Letter pro-
 " voking another to fight, although there be no Fighting, this is
 " a Breach of the Peace. Now a Letter can do no wrong in that
 " kind, but as it incites and stirs up to Fighting, which may oc-
 " casion Bloodshed : And I think there cannot be a greater
 " Breach of the Peace, than for a Man to come to the King's Face,
 " and publish a Libel against him ; and yet, according to their
 " Doctrine, this Man shall go away, and you shall not take him
 " up, but take a *Subpœna* against him, and wait for the Delay of
 " all the ordinary Process ; and they tell you another Thing, that
 " a *Capias*

“ a *Capias* does not lie upon an Information against the Person of
 “ a Peer, and that there is no Precedent of any such Thing ;
 “ but I would pray them to remember the Case of my Lord
 “ *Lovelace*, about some Three Years ago, for breaking a Foot-
 “ man’s Head. It seems if a Man libels the King in his own Pre-
 “ sence, that is not so great a Matter as a little Correction to an
 “ insolent Footman ; but there he was bound in a Recognizance
 “ to appear here in this Court, and accordingly he did appear,
 “ and was charged with an Information ; and as to that Precedent,
 “ I do believe Sir *Robert Sawyer* and Mr. *Finch* won’t contra-
 “ dict me. This was in the First Year of this King. There was
 “ likewise my Lord of *Pembroke’s* Case, who went to a disorderly
 “ House, and there frightened some People : We moved the Court,
 “ and had an Attachment against him for a Misdemeanor, and he
 “ was glad to compound the Thing, or it had not ended so soon
 “ as it did : And yet if a Lord comes to the King’s Person, and
 “ affronts him to his very Face, will not an Attachment lie against
 “ him for it ? Certainly it will. My Lord, we have gone out
 “ of the Way too much already, and these Gentlemen will lead
 “ us farther ; but we hope your Lordships will reduce us to the
 “ Methods of the Law. Here is an Information which we desire
 “ may be read : If they have any thing to plead to it, their Time
 “ for that will come after it is read. If they think they have been
 “ illegally imprisoned, it appears plainly upon this Return, who
 “ they were that did commit them. Here are a great many noble
 “ Lords to answer an Action of false Imprisonment, if these
 “ Lords think fit, and may have these learned Gentlemen, that
 “ are very well able to advise them what they should do in it.

Sir Rob. Sawyer. “ We pray your Lordship’s Judgment,
“ whether the Cafes put by Mr. Solicitor are like our Cafe ?

Mr. Sol. Gen. “ They are as like as Sir *Robert Sawyer* is to
“ Mr. Attorney that was.

Sir Rob. Sawyer. “ Those Cafes are of apparent Breaches of
“ the Peace, so likewise was my Lord of *Devonshire’s* Cafe; but
“ certainly that was not at all like this.

Mr. Finch. “ With your Lordship’s Favour, I would add but
“ one Word, and I would repeat nothing of what has been said.
“ All that I shall say is this; there is a great deal of Difference
“ between an actual Breach of the Peace, and that which in the
“ bare Form of an Information is a Breach of the Peace by Con-
“ struction of Law, it being *contra Pacem*. Suppose it be laid
“ that a Man did *Vi & Armis* speak Words, will that make the
“ Words a Breach of the Peace ?

Mr. Sol. Gen. “ It must be *Vi & Armis*, and certainly is a
“ Breach of the Peace.

Mr. Finch. “ If a Man write a Petition, are the Pen and Ink
“ that he uses the Arms ?

Mr. Sol. Gen. “ My Lord, I hope Mr. *Finch* remembers
“ what I heard him say in *Algernoon Sidney’s* Cafe, *scribere est*
“ *agere*.

Mr. Finch. “ I think it is so, Mr. Solicitor ; but every Action
“ is not a Breach of the Peace.

L. C. J.

L. C. J. " Well, let my Brothers deliver their Opinion, I will
" give mine.

Mr. Just. Allynbone. " The single Question now is, Whether
" or no that which Mr. Solicitor was pleased to name as the
" Crime, and lay it to the Charge of my Lords the Bishops, that
" is a seditious Libel, be a Breach of the Peace. I do confess that
" there is little of Argument to be drawn from Forms of Indi-
" cements; and I shall put no great Stress upon the Words *Vi &*
" *Armis*, where the Fact will not come near it; but if a Com-
" mitment may ensue (as they seem to agree) where-ever Surety
" of the Peace may be required, nothing seems more important
" to me, than that Surety of the Peace should be required where
" there is any thing of Sedition in the Case; and where-ever
" there is a seditious Act, I cannot tell how to make any other
" Constrution of it, but that it is an actual Breach of the Peace;
" that is my Opinion.

Mr. Just. Powell. " I am of the same Opinion in this Point
" too, as I was in the other Point before: It was a Matter of
" great Consequence, I thought, upon the former Point; but now
" it appears to me to be of far greater Consequence than it did at
" first; for here all the great, high, and noble Peers of *England*
" are concerned in it, as to their Privilege. Our Predecessors in
" this Court heretofore would not determine the Privileges of
" the Peers, but left them to themselves to make what Judgment
" they pleased of them. I think truly it is a thing of that
" Weight, that it may be very fit for the Court to take Time to
" consider of it; and I declare for my own Part, I will not take
" upon me to deliver any Opinion in a Matter of this Conse-
" quence

“ quence, before I have consulted all the Books that can give me
 “ any Light in the Case.

Mr. Just. Alibone. “ Brother *Powell*, I am not determining,
 “ limiting, or cramping the Privilege of Peers; but I am only
 “ considering whether or no a seditious Libel be a Breach of the
 “ Peace: It is agreed to be on all Hands a Breach of the Peace.
 “ Is there any thing that will require Sureties of the Peace to be
 “ given upon the doing of it? For there Sir *Robert Sawyer* has
 “ laid the Foundation of his Distinction, and if that shall draw
 “ any Person under a Commitment, then, say I, in my Judgment,
 “ where ever there is a seditious Libel, there is that which is an
 “ actual Breach of the Peace; for I am sure there is that which is
 “ sufficient to require Sureties of the Peace. I controvert not
 “ the Right of the Peers one Way or other; but only declare
 “ my Opinion, That this is a Fact that comes within the Rule laid
 “ down by them, that what will require Sureties of the Peace, is
 “ a Breach of the Peace.

Mr. Just. Holloway. “ God forbid that in a Case of this Na-
 “ ture, any one should take upon him here to say, that every Mis-
 “ demeanor were a Breach of the Peace! I say not so: But cer-
 “ tainly there are some such Misdemeanors as are Breaches of the
 “ Peace; and if here be such a Misdemeanor before us, then it
 “ is acknowledged, that even in Parliament-time, a privileged
 “ Person might be committed for it: For in Treason, Felony,
 “ and Breach of the Peace, Privilege does not hold. I will not
 “ take upon me, as my Brother said, to determine concerning
 “ the Privilege of the Peers: It is not of our Cognizance, nor
 “ have we any thing to do, either to enlarge or confine Privi-
 “ lege;

“ lege ; nor do we determine whether this be such a Libel as is
 “ charged in the Information ; that will come in Question an-
 “ other Time : But certainly as this Case is, the Information
 “ ought to be read, and my Lords ought to appear and plead
 “ to it.

L. C. J. “ Certainly we are all of us here as tender of the
 “ Privileges of the Peers as any in the World can be, and as ten-
 “ der as we would be and ought to be in trying any Man’s Right :
 “ It becomes us to do it with great Respect and Regard to my
 “ Lords the Bishops; and therefore I would be as careful (if
 “ that were the Question before me) to consider very well be-
 “ fore I give my Opinion, as ever I was in my Life. But when
 “ I see there can come no Mischief at all to the Privileges of the
 “ Peers, by what is agreed on all Hands, I think I may very justly
 “ give my Opinion: For here is the Question; Whether the
 “ Fact charged in the Warrant be such a Misdemeanor as is a
 “ Breach of the Peace? And the Words of the Warrant (which
 “ is now upon the Record) being such as have been recited, I can-
 “ not but think it is such a Misdemeanor as would have required
 “ Sureties of the Peace; and if Sureties were not given, a Com-
 “ mitment might follow: And therefore I think the Informa-
 “ tion must be read.”

The Information being read,

Then (p. 324.) “ his Grace the Lord Archbishop of *Canter-*
 “ *bury* stood up, and offered a Plea to the Court.

L. Archbisp.

L. Archbisch. of Cant. " My Lord, I tender here a short Plea
 " (a very short one) on behalf of myself and my Brethren the
 " other Defendants, and I humbly desire the Court will admit of
 " this Plea.

The Bishops Plea.

" *And the aforesaid William Archbishop of Canterbury, Wil-*
 " *liam Bishop of Asaph, Francis Bishop of Ely, John Bishop of*
 " *Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop*
 " *of Peterborough, and Jonathan Bishop of Bristol, being present*
 " *here in Court in their own Persons; pray Oyer of the Informa-*
 " *tion aforesaid; and it is read to them, which being read and*
 " *heard by them the said Archbishop and Bishops, the said Arch-*
 " *bishop and Bishops say, that they are Peers of this Kingdom*
 " *of England, and Lords of Parliament, and each of them is*
 " *one of the Peers of this Kingdom of England, and a Lord of*
 " *the Parliament, and that they being (as before is manifest)*
 " *Peers of this Kingdom of England, and Lords of Parliament,*
 " *ought not to be compelled to answer instantly for the Misde-*
 " *meanor aforesaid, mentioned in the said Information exhibited*
 " *here against them in this Court; but they ought to be required*
 " *to appear by due Process in Law issuing out of this Court here*
 " *upon the Information aforesaid, and upon their Appearance to*
 " *have a Copy of the said Information exhibited against them,*
 " *and reasonable Time to imparle thereupon, and to advise with*
 " *Counsel learned in the Law, concerning their Defence in that*
 " *Behalf, before they be compelled to answer the said Informa-*
 " *tion: Whereupon, for that the said Archbishop and Bishops*
 " *were imprisoned, and by Writ of our Lord the King, of Ha-*
 " *bas*

“ *beas Corpus, directed to the Lieutenant of the Tower of Lon-*
 “ *don, are now brought here in Custody, without any Process*
 “ *upon the Information aforesaid issued against them, and with-*
 “ *out having any Copy of the said Information, or any Time given*
 “ *them to imparle, or be advised, they pray Judgment, and the*
 “ *Privilege of Peers of this Kingdom, in this Case to be allowed*
 “ *them; and that they the said Archbishop and Bishops may not be*
 “ *compelled instantly to answer the Information aforesaid, &c.*

Robert Sawyer,

Hen. Finch,

Hen. Pollexfen.

“ *Mr. Att. Gen.* “ My Lord, with your Lordship’s Favour, this,
 “ in an ordinary Person’s Case, would perhaps be thought not
 “ fair Dealing, or that which (it being in the Case of these Re-
 “ verend Prelates) I shall not now name; to make all this De-
 “ bate and Stir in a Point of this Nature; to take the Judgment
 “ of the Court after three or four Hours arguing, and when the
 “ Opinion of the Court has been delivered, then to put in a
 “ Plea to the Jurisdiction of the Court—

Sir Rob. Sawyer. “ It is no such Plea.

“ *Mr. Att. Gen.* “ It is so in Effect; but certainly it is such an
 “ Irregularity, and such an unfair way of Proceeding as would
 “ not be endured in any ordinary Case; and I hope you will
 “ give so little Countenance to it as to reject it, and make them
 “ plead according to the usual Course and Way of Proceedings.
 “ Certainly a Plea of this Nature, after so long an Argument,
 “ would be reckoned nothing but a Trick.

D d

Mr.

Mr. S. Pemberton. " We hope the Court and you are not of
" one Mind, Mr. Attorney, in this Matter; we desire the Court
" to receive the Plea,

Mr. Att. Gen. " With Submission, the Court is not bound
" to receive Pleas that are put in purely for Delay, as this is;
" for the Judgment of the Court has been already given in the
" very Matter of this Plea; and for rejecting a Plea, it is done
" every Day; if a Man puts in a mere trifling dilatory Plea, the
" Court may reject it. Does this Plea contain any thing in it,
" but what has been argued and debated *pro & con*, and settled
" by the Court already? If they will put in any Plea in Chief
" they may; but such a Plea as this, I hope, shall not have so
" much Countenance as to be received by the Court."

The Plea was afterwards rejected, and the Bishops held to plead
over in Chief; upon which they pleaded Not Guilty, and were
immediately bailed.

N^o IV. *Copy of the RECORD in the Case of the King against*
Culpepper.

Placita coram Domino Rege apud Westm. de Termino Pasche
Anno Regni Domini Willielmi Tertii nunc Regis Octavo &c.
Rot. 23. Annoque Domini 1696.

Kancs. Memorand' quod Edrus' Ward nup' Ar' modo Mil'
nup' Attorn' Domini Regis & Domin' nuper Reginae Gen'alis qui
pro eisdem Domino Rege & Domina nup' Regina in hac parte
sequebatur in propria persona sua ven' hic in Cur' dei Domini
Regis

Regis & dca' Dnæ nuper Reginae coram ipsis Rege & nup' Regina apud Westm' die Lunæ prox' post tres Septimanas Sanc' Trinitatis anno Regni Domini Willielmi nunc Regis & Dominae Mariæ nup' Reginae Angl' &c. quinto Et pro eisdem Domino Rege & Domina nup' Regina protulit hic in Cur' dict' Domini Regis & Dominae nup' Reginae coram ipsis Rege & nup' Regina tunc & ibm' quand' Informacionem versus Thomam Taylor de P'och' de Maidstone in Com' Kanc' Bar' Thomam Colepepyr de Aylesford in Com' præd' Bar' & al' Que quidem Informacio sequitur in hæc verba Kanc'is. Memorand' quod Edrus' Ward Ar' Attorn' Domini Regis & Dominae Reginae nunc gen'al qui pro eisdem Domine Regæ & Domina Regina in hac parte sequitur in propria persona ven' hic in Cur' dci' Domini Regis & Dom' Reg' coram ipsis Rege & Regina aqud Westm' die Lunæ prox' post tres Septimanas Scæ' Trinitatis isto eodem Termino & pro eisdem Domino Rege & Domina Regina dat' Cur' hic intelligi & informari quod Thomas Taylor de P'och' de Maidstone in Com' Kanc' Bar' Thomas Colepepyr de Aylesford in Com' præd' Bar' Willielmus Watton de Addington in Com' præd' Ar' Thomas Stringer de Grayse Inne in Com' Middlesex Ar' Thomas Blisse de Maidstone præd' in Com' Kanc' præd' Ar' Edrus' Barnham de eisdem Ar' Edrus' Page de eisdem Laborer Thomas Cullen de Aylesford præd' in Com' als' dict' Adam' Gifford de eisdem Laborer & Georgius Dames de Maidstone præd' Laborer decimo-nono die Octob' anno regni Domin' Willielm' & Mar' Dei Gratia Angl' Scot' Fran' & Hib' Regis & Reginae Fidei Defensor &c. quarto apud P'och' de Linton in Com' præd' vi & armis &c. sese illic rioto' assemblaver' congregaver' & coadunaver' ad pacem dco' Domini Regis & Reginae nunc perturb' Et ipsi sic assemblat' congregat' & coadunit' existen' domu' manc'onat'.

man'onal' ejusdem Franc' Wythens Mil' Servien' ad legem
 scituat' apud P'och' de Linton præd' in Com' Kane' præd' Vi &
 Armis videlicet Gladiis Sclopiis ang'ce Pistollis Baculis Cultellis &
 al' Armis tam invasivis quam defensivis quæ ipsi iidem Thomas
 Taylor Thomas Colepepyr Willus' Watron Thomas Stringer
 Thomas Blisse Edrus' Barnham Edrus' Page Thomas Cullen
 Adam' Jessop & Georgius Dames in manib' suis ad tunc & ibidem
 huer' & tenuer' vi & armis præd' illicite riorose & tumultuose freger'
 & intraver' & in & sup' præd' Francum Wythens in pace Dei
 & dei' Domini Regis & Regin' ad tunc in eadem domo sua
 man'onali existen' ad tunc & ibidem vi & armis præd' illicite riorose
 routose tumultuose & furiose Insult' & Affraiam fecer' & ipsum
 Franciscum Wythens ad tunc & ibidem vi & arms præd' illicit'
 rioto' routo' & furio' verbaver' vulnaver' & malectraver' ita
 quod de vita ejus maxime desperabatur & ipsum Franciscum ad
 tunc & ibidem imprisonaver' & in prisona diu viz. per Spatium
 duarum Horarum ibidem detinuer' Et alia enormia eidem Francisco
 Wythens ad tunc & ibidem Vi & Armis præd' illicite riorose
 routose furiose & injuriose intuler' in maximum terorem prefati
 Francisci Wythens ad gre' dampnu' ipsius Francisci in pessim' ex-
 empl' omnium aliorum in tali casu delinquen' ac contra pacem
 dei' Domini Regis & Dominae Reginae nunc Coron' & Dignitat'
 suas &c. Unde idem Attor' dei' Domini Regis & Dominae Re-
 ginae nunc gen'al pro eisdem Domino Rege & Domina Regina
 pet' advisament Cur' hic in premissis & debit' legis process' versus
 ipsos præfat' Thomam Taylor Bar' Thomam Colepepyr Bar'
 Willielm' Wotton Thomam Stringer Thomam Blisse Edrum'
 Barnham Edrum' Page Thomam Cullen Adam' Jessop alias Gif-
 ford & Georgium Dames in hac parte fieri ad respondend' deis'
 Domino

Domino Regi & Dominæ Reginæ de & in premissis &c. — Per quod precept' fuit Vic' Com' præd' quod non omitt' &c. quin venir' faciet eos ad respond' &c. Et modo filit' die Mercurii prox' post quinden' Pasche isto eodem Termino (ante quem diem dicta Domina nuper Regina diem suum clausit extremum) coram Domino Rege apud Westm' ven' præd' Thomas Colepepyr Willus' Watton Thomas Stringer Thomas Blisse Edrus' Barnham Thomas Cullen & Adam Jessop alias Gifford per Lionel' Fanshaw Attorn' suum & hit' audit' Informacion' præd' separatim dicunt quod non sunt inde Culpabiles Et de hoc pon' se sup' Priam Et Thomas Trevor Mil' modo Attorn' dci' Domini Regis Gen'al' qui pro eodem Domino Rege in hac parte sequitur filit' &c.

Sabbati, 15^o die Maii, 1675.

The House being informed that there is a Cause upon an Appeal, brought by Sir *Nich. Stoughton* against Mr. *Onslowe*, a Member of this House, appointed to be heard at the Bar of the Lords House; Commons Journ. N^o V.
Vol. IX. p. 388.

Resolved, That a Message be sent to the Lords, to acquaint them, that this House has received Information, that there is a Cause upon an Appeal brought by Sir *Nich. Stoughton* against Mr. *Onslowe*, a Member of this House, appointed to be heard at the Bar of their House on *Monday* next, and to desire their Lordships to have Regard to the Privilege of this House; and that Sir *Richard Temple* do go with the Message to the Lords.

Ordered, That Mr. *Onslowe* do not appear any further in the Prosecution of the Appeal brought against him by Sir *Nich. Stoughton* in the House of Lords.

E c

Ordered,

Ordered, That *Sir Nich. Stoughton* be sent for in Custody of the Serjeant at Arms attending this House, to answer his Breach of Privilege, in prosecuting a Suit in the House of Lords against *Arthur Onslowe*, Esq; a Member of this House, during the Session and Privilege of Parliament.

Resolved, That whosoever shall appear at the Bar of the Lords House, to prosecute any Suit against any Member of this House, shall be deemed a Breaker and Infringer of the Rights and Privileges of this House.

Commons Journal,
Vol. IX. p. 340.

Martis, 18^o *Maii*, 1675.

Sir Richard Temple reports from the Lords, That he had attended their Lordships; according to the Command of this House, with the Message in the Case of *Mr. Onslowe*, to which the Lords returned an Answer; which being in Writing, was delivered in at the Clerk's Table, and read, and is as followeth:

The Lords do declare, That it is the undoubted Right of the Lords in Judicature to receive and determine, in Time of Parliament, Appeals from inferior Courts, though a Member of either House be concerned, that there may be no Failure of Justice in the Land; and from this Right, and the Exercise thereof, their Lordships will not depart.

The Matter of the Lords Answer being debated;

Resolved,

Resolved, &c. That it is the undoubted Right of this House that none of their Members be summoned to attend the House of Lords during the Sitting or Privilege of Parliament.

Resolved, &c. That a Conference be desired with the Lords upon the Privileges of this House contained in the Lords Answer to the last Message of this House in the Case of Mr. Onslowe.

Jovis, 20 die Maii, 1675.

Commons Journal,
Vol. IX. p. 342.

Sir Thomas Lee reports from the Committee appointed to draw up Reasons to be offered at the Conference to be had with the Lords upon the Privileges of this House, contained in the Lords Answer to the last Message of this House in the Case of Mr. Onslowe; which were twice read; and with some Alterations at the Clerk's Table upon the Question severally agreed to; which are as followeth, viz.

1. " That by the *Laws and Usage of Parliament*, Privilege
" of Parliament belongs to every Member of the House of Com-
" mons, in all Cases except Treason, Felony, and Breach of the
" Peace, which hath often been declared in Parliament, without
" any Exception of Appeals before the Lords.

2. " That the Reason of that Privilege is, that the Members of
" the House of Commons may freely attend the publick Affairs
" *in that House, without Disturbance or Interruption*, which
" doth extend as well to Appeals before the House of Peers, as
" to Proceedings in other Courts.

3. " That

3. " That, by the constant Course and Usage of Parliament,
" no Member of the House of Commons can attend the House
" of Lords, without the special Leave of that House first obtained;
" much less be summoned or compelled so to do.

4. " If the Lords shall proceed to hear and determine any Ap-
" peal, where the Party neither can nor ought to attend, such
" Proceedings would be contrary to the Rules of Justice.

5. " That the not determining of an Appeal against a Member
" of the House of Commons is not a Failure of Justice, but only
" a Suspension of Proceedings, in a particular Case, during the
" Continuance of that Parliament, which is but temporary.

6. " That in case it were a Failure of Justice, it is not to be
" remedied by the House of Lords alone; but it may be by Act
" of Parliament."

POST-

P O S T S C R I P T.

FROM a Book, intituled *Orders, Proceedings, Punishments, and Privileges in Parliament*, printed in 1661, collected by Mr. *William Lambard* of *Lincoln's-Inn*, whose Knowledge as a Lawyer, and Experience as an able Member of Parliament, no one can question.—The following Articles are transcribed as additional Authorities to prove, that at the Time Mr. *Lambard* made this Collection from the Journals, which was soon after the 29 *Eliz.* 1578. Privilege was understood not to extend to the Crown's Suits or Prosecutions.

“ Sir *Edward Warner* (Lieutenant of the Tower) Pag. 46.
Sir *Ed. Warner*
for Criminal Cause.
 “ was sent out of the House to the Tower as Prisoner, for an Offence done before the Summons
 “ of the Parliament; and Sir *William Cecil*, then Secretary, said,
 “ That the Queen was assured by her Justices, that she might
 “ commit any of the House during the Parliament, for an Offence against the Crown and Dignity, and that they shewed
 “ divers Precedents thereof.”

“ The Servants of Sir *Henry Jones*, a Knight of Pag. 47.
Sir *H. Jones*,
an Affray.
 “ the House, did hurt a Servant of one — *Gardiner*, a Burgess. The Matter was heard, and
 “ Process was awarded to the Sheriff of *London* to bring them
 “ into Court, and their Master gave Sureties that they should
 “ appear the next Term, and answer both the Queen and the
 “ Party, and so they were delivered by the Privilege to wait upon
 F f “ their

“ their Master;—and so by Conference of this Case with Sir
 “ Edward Warner’s, it seemeth a Man shall not have the Privilege
 “ of the House for a criminal Offence that immediately touches
 “ the King; but where it touches it not, indirectly, as by Tres-
 “ pass against another, for his Fine.”

Pag. 60. “ William Allen, Burgess for Calne in Wiltshire, had
 “ the Privilege against an Attachment upon Process out of the
 “ Exchequer, 22d April, 1 Mar.—Consider whether the Process
 “ were for the Queen, or for a common Person.”

F I N I S.



Addition to APPENDIX, N^o III.

[Omitted by Mistake in its proper Place].

IT appears by the Journals of the House of Peers, that after the Revolution this Matter was taken up in that House,

Die Mercurii, 1 die Maii, 1689. Lords Journal, 1 May, 1689, p. 370.

The Earl of *Huntington* made another Report from the Committee of Privileges, That the Duke of *Grafton*, the Lord *Lovelace*, the Archbishop of *Canterbury*, the Bishops of *St. Asaph*, *Bristol*, *Peterborough*, *Ely*, *Bath* and *Wells*, and *Chichester*, having been desired by the Lords of the Committee to cause to be brought this Day before their Lordships a Relation in Writing of the Proceedings against their Lordships in the Court of King's Bench, *in Prejudice to the Privilege of the Peers in general, as well as to their Persons in particular*, which having not been done by any of the said Lords, that it is the Opinion of the Committee that the House be moved to take some effectual Order therein.

Upon Report from the Lords Committees for Privileges, it is ordered by the Lords, &c. that Mr. — *Ince* do attend their Lordships with an Account in Writing of the Proceedings that were had in the Court of King's Bench against the Archbishop of *Canterbury*, the Bishop of *Bath* and *Wells*, the Bishop of *St.*

a

Asaph,

Asaph, the Bishop of *Bristol*, the Bishop of *Ely*, the Bishop of *Chichester*, and the Bishop of *Peterborough*, in Trinity Term last.

Nothing further was done in this Affair in the House of Peers. — That House did not want Inclination to assert their Privileges, and to censure any of the Judges in the former Reign who had violated them.

Lords Journal, 10 May,
1689, p. 420.

Upon Report from the Lords Committees for Privileges, who were of Opinion, that the Proceedings against the Earl of *Devon* in the Court of King's Bench, in *Easter* Term, in the 3d Year of King *James* the 2d, upon an Information for an Assault upon Mr. *Culpeper*, wherein his Lordship's Plea of Privilege of Parliament was overruled, and he was fined 30,000 *l.* and thereupon committed to the King's Bench in Execution, were great Violations of the Privileges of the Peers of this Realm; after hearing the Record of the Court of King's Bench, wherein the Judgment against the Earl of *Devon* is entered, read, and also Sir *Robert Wright*, Sir *Richard Holloway*, and Mr. Justice *Powell* (who gave the Judgment against the said Earl of *Devon*) what they could say for themselves to justify their Proceedings; and Notice having been given to the King's Counsel, to the End that they might attend if they had any thing to offer whether a Peer of this Realm might by Law be committed in Execution for a Fine, the said Counsel did accordingly give their Attendance (after a Week's Notice) but did offer nothing therein.

After full Consideration had of the several Cases and Precedents wherein the Privileges of the Peers have been concerned, the Lords Spiritual and Temporal in Parliament assembled do order and adjudge, that the Court of King's Bench, in over-ruling the Earl of *Devon's* Plea of Privilege of Parliament, and forcing him to plead over in chief, it being within the usual Time of Privilege, did thereby commit a manifest Breach of Privilege of Parliament; and that the Fine of 30,000 *l.* imposed by the Court of King's Bench upon the Earl of *Devon*, was excessive and exorbitant, against *Magna Charta*, the common Right of the Subject, and the Law of the Land; and that no Peer of this Realm at any Time ought to be committed for Non-payment of a Fine to the King.

In *June* 1689, this Point was taken up by the House of Commons, where the Judges Determination that the Privilege of Peerage did not extend to a Commitment for a Libel was passed over, without the Legality of it being questioned; so that the Determination in the Bishops Case ought to be considered as a full and express Authority in Point, and what ought to have been the Rule in the Case of Mr. *Wilkes*.

Martis, 4^o die Junii, 1689.

Commons Journal,
Vol. X. p. 165.

The Second Head of Exceptions out of the Bill of Indemnity was read.

Ordered, That the Chief Governor of the Tower, or his Deputy, do attend this House on *Friday* Morning next, with the
original

original Warrant of Commitment of the Seven Bishops to the Tower the last Summer.

Ordered, That the Clerk of the Crown of the King's Bench do attend this House on *Friday* Morning next, with the Record of, and other the Proceedings relating to, the Trial of the Seven Bishops.

Commons Journal, *Sabbati, 8^o die Junii, 1689.*
Vol. X. p. 168.

The House being informed that the Clerk of the Crown and Custos Brevium attended with the Records of the Judgments in *Goodwin* and *Hales*, and against Mr. *Otes* and Mr. *Johnson*, and the Return of the *Habeas Corpus* relating to the Seven Bishops;

They were called in, and delivered Copies of those Records, as they were directed;

And then withdrew.

Commons Journal, *Jovis, 13^o die Junii, 1689.*
Vol. X. p. 179.

Ordered, That Sir *Samuel Astrey* and Sir *Robert Henley* do attend this House To-morrow Morning, to certify the . . . Names of those Judges who sat upon the Trial of the Seven Bishops.

Commons Journal, *Sabbati, 13^o die Junii, 1689.*
Vol. X. p. 185.

Then a Copy of the Bishops Commitment to the *Tower* was delivered in from the Privy-Council Books, and read; and is as followeth:

At

At the Court at Whitehall, the 8th of June, 1688.

Present,

The King's Most Excellent Majesty,

Lord Chancellor, Lord President, Lord Privy-Seal, Marquis of *Powis*, Lord Chamberlain, Earl of *Huntington*, Earl of *Peterborough*, Earl of *Craven*, Earl of *Berkely*, Earl of *Morray*, Earl of *Middleton*, Earl of *Melford*, Earl of *Castlemain*, Viscount *Preston*, Lord *Dartmoth*, Lord *Godolphin*, Lord *Dover*, Mr. Chancellor of the Exchequer, Lord Chief Justice *Herbert*, Sir *Nic. Butler*, Mr. *Petre*.

HIS Majesty having this Day acquainted their Lordships with a Petition that he had received some time since, signed by the Archbishop of *Canterbury*, and Six of the Suffragan Bishops of that Province, which had much surpris'd him; and that thereupon he had caus'd them to be summoned to attend this Day: Which they accordingly did; and being called in; and having heard the said Petition read, which was likewise shewed unto them, they acknowledged it to be their Petition, and that the Signing to it was their Hand-writing: Whereupon it was ordered, That Mr. Attorney-General and Mr. Solicitor-General should prosecute them at the King's Bench-Bar for the same: And being afterwards made acquainted therewith, and that it was the usual Method to enter into Recognizance to appear the First Day of the Term; their Lordships declined to comply therewith, in regard they had been advis'd by their Counsel it would be prejudicial to their Privileges, as being Peers of the Realm: His Ma-

b.

jesty

jeſty was then pleaſed to order their Commitment to the *Tower of London*, as followeth;

THESE are, in his Maſteſty's Name, and by his Command, to require you to take into your Cuſtody the Perſons of *William* Lord Archbiſhop of *Canterbury*, *William* Lord Biſhop of *St. Aſaph*, *Francis* Lord Biſhop of *Ely*, *John* Lord Biſhop of *Chicheſter*, *Thomas* Lord Biſhop of *Bath and Wells*, *Thomas* Lord Biſhop of *Peterborow*, and *Jonathan* Lord Biſhop of *Briſtol*, for contriving, making, and publiſhing a ſeditious Libel in Writing againſt his Maſteſty and his Government; and them ſafely to keep in your Cuſtody, until they ſhall be delivered by due Courſe of Law: For which This ſhall be your Warrant. At the Council in *Whitehall*, the Eighth Day of *June* 1688.

Signed and ſealed by Lord Chancellor, Lord Preſident, Lord Privy-Seal, Marquis of *Powis*, Lord Chamberlain, Earl of *Huntington*, Earl of *Peterborow*, Earl of *Craven*, Earl of *Morray*, Earl of *Middleton*, Earl of *Melford*, Earl of *Caſtlemain*, Viſcount *Preſton*, Lord *Dartmoth*, Lord *Godolphin*, Lord *Dover*, Chancellor of the Exchequer, Lord Chief Juſtice *Herbert*, Sir *Nich. Butler*.

To the Lieutenant of the
Tower of London.

A Warrant

A Warrant to *Philip Ryley*, Esquire, Serjeant at Arms, to take into his Custody the said Lord Archbishop and Bishops, and to deliver them to the Lieutenant of the *Tower of London*, dated *ut supra*.

THERE being this Day issued a Warrant by his Majesty's special Command, in Council, under the Hands and Seals of the Lords of his Majesty's most Honourable Privy-Council, for committing to the *Tower of London* his Grace *William* Lord Archbishop of *Canterbury*, *William* Lord Bishop of *St. Asaph*, *Francis* Lord Bishop of *Ely*, *John* Lord Bishop of *Chichester*, *Thomas* Lord Bishop of *Bath and Wells*, *Thomas* Lord Bishop of *Peterborow*, and *Jonathan* Lord Bishop of *Bristol*, for contriving, making, and publishing a seditious Libel against his Majesty and his Government (a Copy whereof is hereunto annexed); there to be safely kept, until they shall be delivered by due Course of Law: It is this Day further ordered, by his Majesty in Council, That Sir *Thomas Powis*, Knight, his Majesty's Attorney-General, and Sir *Wm. Williams*, Knight, his Majesty's Solicitor-General, do forthwith prepare an Information against the said Archbishop, and the several other Bishops above-named, for the Offence aforesaid; and prosecute the same according to Law, in his Majesty's Court of King's Bench, the next Term.

And a Debate arising upon the First Head of Exceptions concerning the Dispensing Power, and the Case of *Goodwin* and *Hales*;

Resolved, That Sir *Edward Herbert* be excepted out of the Bill of Indemnity upon this Head.

Resolved,

Resolved, That Sir *Francis Withens* be excepted out of the Bill of Indemnity on this Head.

Resolved, That Sir *Robert Holloway* be excepted out of the Bill of Indemnity on this Head.

Resolved, That Sir *Robert Wright* be excepted out of the Bill of Indemnity upon this Head.

And then the House adjourned till To-morrow Morning, Nine of the Clock.

